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Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(i) Kinds of Settlements/601. Meaning of 'settlement'.

SETTLEMENTS (

1. NATURE AND VALIDITY OF SETTLEMENTS

(1) IN GENERAL

(i) Kinds of Settlements

601. Meaning of 'settlement'.

Although there is no generally accepted definition of 'settlement', Parliament has from time to time defined the word for the purposes of particular statutes¹. A possible definition of 'settlement' is any disposition of property, of whatever nature², by any instrument or instruments, by which trusts are constituted³ for the purpose of regulating the enjoyment of the settled property successively among the persons or classes of persons nominated by the settlor⁴. 'Settlement' has two different senses in law: it can mean either the documents which express the dispositions that are the settlement, or the state of affairs which those documents bring about⁵.

A single document may create more than one settlement, whereas trusts constituted by more than one document may create a single settlement⁶.

The term 'compound settlement' is used to describe a settlement that subsists by virtue of several different instruments, often a series of successive dispositions such as a deed of settlement⁷, a disentailing deed⁸ and a deed of resettlement⁹.

1 For examples of statutory definitions of 'settlement' see the Harbours and Passing Tolls etc Act 1861 s 2; the Settled Land Act 1925 s 1 (as amended), s 117 (see PARA 678 post); the Land Registration Act 1925 s 88(2) (repealed); the Inheritance Tax Act 1984 s 43(2) (see INHERITANCE TAXATION vol 24 (Reissue) PARA 477); and the Income and Corporation Taxes Act 1988 s 660G (as added) (see INCOME TAXATION vol 23(2) (Reissue) PARA 1554). For a corresponding definition of 'settled property' see eg the Taxation of Chargeable Gains Act 1992 s 68 (see PARA 621 note 3 post). For the meaning of 'settled land' see the Settled Land Act 1925 ss 2, 117(1)(xxiv); and PARA 677 post.

2 Everything capable of private ownership and alienation may be settled by the owner, but limited interests cannot normally be created in consumable chattels: see PARA 611 post; EQUITY vol 16(2) (Reissue) PARA 608; GIFTS vol 52 (2009) PARA 224; PERSONAL PROPERTY vol 35 (Reissue) PARA 1230. Real and personal property may be, and frequently is, settled by the same instrument: see PARA 937 et seq post.

3 See *Re Marshall's Will Trusts*[1945] Ch 217, [1945] 1 All ER 550; and TRUSTS vol 48 (2007 Reissue) PARA 644 et seq. As to the essentials to validity of trusts see PARA 614 et seq post.

4 Cf the shorter description given in *Re Symon, Public Trustee v Symon* [1944] SASR 102 at 109 per Mayo J.

5 See *Cook v Cook*[1962] P 181 at 185, [1962] 2 All ER 262 at 265 per Phillimore J; affd [1962] P 235, [1962] 2 All ER 811, CA. See also eg *Re Ogle's Settled Estates*[1927] 1 Ch 229 at 233 per Romer J, referring to the use of the word 'settlement' in the Settled Land Act 1925. An analogous distinction in meaning is borne by the word 'provision', which may refer either to a clause of a written instrument or to the result ensuing from the clause: see *Berkeley v Berkeley*[1946] AC 555 at 580, [1946] 2 All ER 154 at 166, HL, per Lord Simonds. Cf *IRC v Saunders*[1958] AC 285 at 291-292, [1957] 3 All ER 43 at 45-46, HL, per Viscount Simonds ('power to determine settlement or any provision thereof').

6 As to whether a transaction creates more than one settlement see *Roome v Edwards*[1982] AC 279 at 292-293, [1981] 1 All ER 736 at 739-740, HL, per Lord Wilberforce. Cf *Bond v Pickford* [1983] STC 517, 57 TC 301, CA; *Swires v Renton* [1991] STC 490, 64 TC 315.

7 As to deeds of settlement see PARA 612 post.

8 As to disentailing deeds see REAL PROPERTY vol 39(2) (Reissue) PARA 121 et seq.

9 As to this use of the term 'compound settlement' see eg *Re Earl of Carnarvon's Chesterfield Settled Estates*, *Re Earl of Carnarvon's Highclere Settled Estates*[1927] 1 Ch 138 at 143. Cf *Re Byng's Settled Estates*[1892] 2 Ch 219 at 225 per North J; *Re Marquis of Ailesbury and Lord I'veagh*[1893] 2 Ch 345; *Re Lord Monson's Settled Estates*[1898] 1 Ch 427. The term 'compound settlement' is used in, but is not defined by, the Settled Land Act 1925: see s 1(1) proviso; and PARA 681 post. As to compound settlements see further PARA 681 et seq post. As to resettlement generally see PARA 606 post.

UPDATE

601 Meaning of 'settlement'

NOTE 1--Income and Corporation Taxes Act 1988 s 660G now Income Tax (Trading and Other Income) Act 2005 ss 620, 648.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(i) Kinds of Settlements/602. Kinds of settlement.

602. Kinds of settlement.

Settlements may be made on many occasions and for many purposes. Among familiar kinds of settlements are marriage settlements¹ postnuptial settlements², settlements for the benefit of children³, strict settlements and resettlements of land⁴, protective settlements⁵, settlements made for the purpose of reducing the incidence of tax⁶, settlements made on the separation of spouses⁷ and settlements made on divorce⁸.

Settlements may also be classified according to whether they are made for valuable consideration⁹ or are voluntary¹⁰, and according to whether their subject matter consists of realty or personality¹¹.

1 See PARA 603 post.

2 See PARA 604 post.

3 See PARA 605 post.

4 See PARA 606 post.

5 See PARA 607 post.

6 See PARA 608 post.

7 See MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 506 et seq.

8 See MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 696 et seq.

9 As to consideration for settlements see PARAS 659-663 post.

10 As to the importance of the distinction between settlements made for valuable consideration and voluntary settlements see PARA 615 post.

11 As to settlements of realty see PARA 609 post; and as to settlements of personality see PARA 611 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(i) Kinds of Settlements/603. Marriage settlements.

603. Marriage settlements.

A marriage settlement is a settlement made in consideration of marriage either before or after the marriage, but after the marriage only if made in pursuance of an ante-nuptial agreement to settle¹. The form of a marriage settlement has to a large extent become stereotyped², although not so stereotyped that any particular provision can be presumed to have been inserted in the settlement³.

1 As to contracts for settlements see PARA 627 et seq post. As to consideration for settlements see PARAS 659-663 post. If the court grants a decree of divorce, nullity or judicial separation, it has power to vary an ante-nuptial or post-nuptial settlement for the benefit of the parties to the marriage and of the children of the family, and for this purpose the term 'settlement' has been interpreted as having a wide meaning: see the Matrimonial Causes Act 1973 s 24(1) (as prospectively substituted); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARAS 499, 506, 510 and 518. See also *Brooks v Brooks* [1996] AC 375, [1995] 3 ALL ER 257, HL, where a pension scheme was held to be a post-nuptial settlement for the purposes of that provision.

2 See further PARA 628 et seq post.

3 See *Re Knapp's Settlement, Cowan v Knapp* [1952] 1 All ER 458n; *Cummins v Hall and Cummins* [1933] IR 419. Marriage settlements, including post-nuptial settlements made in pursuance of an ante-nuptial contract, are not bills of sale within the Bills of Sale Act 1878 s 4 (see FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1656, 1658), but a post-nuptial settlement which is not made in pursuance of such a contract is a bill of sale within that Act, and, if it contains an assurance of chattels by way of security for the payment of money, is a bill of sale within the Bills of Sale Act (1878) Amendment Act 1882: see s 3; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARA 1658.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(i) Kinds of Settlements/604. Post-nuptial settlements.

604. Post-nuptial settlements.

A post-nuptial settlement usually contains the same provisions as those contained in an ante-nuptial settlement¹. It will be considered as a voluntary settlement² unless either it is made in pursuance of an agreement made prior to the marriage³, in which event it will be deemed to have been made in consideration of the marriage⁴, or it is the result of a bargain made after the marriage between the spouses⁵, or it is made for valuable consideration given by some other person⁶.

1 As to variations of post-nuptial settlements on divorce, nullity or judicial separation see PARA 603 note 1 ante. As to marriage settlements generally see PARA 628 et seq post.

2 See *Goodright d Humphreys v Moses* (1775) 2 Wm Bl 1019; *Evelyn v Templar* (1787) 2 Bro CC 148; *Currie v Nind* (1836) 1 My & Cr 17; *Doe d Barnes v Rowe* (1838) 6 Scott 525; *Shurmur v Sedgwick, Crossfield v Shurmur* (1883) 24 ChD 597; *Re Gillespie, ex p Knapman, Trustee v Gillespie* (1913) 20 Mans 311. See also *Pownall v Anderson* (1856) 2 Jur NS 857, where articles entered into after marriage were held inoperative.

3 As to contracts for settlements see PARA 627 et seq post.

4 As to marriage as consideration for a settlement see PARA 660 et seq post. A settlement made after a marriage in Scotland does not become an ante-nuptial settlement by reason of the recelebration of the marriage in England: *Ex p Hall* (1812) 1 Ves & B 112.

5 *Teasdale v Braithwaite* (1876) 4 ChD 85 (affd (1877) 5 ChD 630, CA); *Re Foster and Lister* (1877) 6 ChD 87, dissenting from *Butterfield v Heath* (1852) 15 Beav 408; *Re Lynch, Lynch v Lynch* (1879) 4 LR Ir 210, Ir CA; *Re Bell's Estate* (1882) 11 LR Ir 512; *Schreiber v Dinkel* (1884) 54 LJ Ch 241. See also *Stileman v Ashdown* (1742) 2 Atk 477; *Brown v Jones* (1744) 1 Atk 188 at 190; *Ramsden v Hylton* (1751) 2 Ves Sen 304; *Parker v Carter* (1845) 4 Hare 400 at 409; *Harman v Richards* (1852) 10 Hare 81; *Hewison v Negus* (1853) 16 Beav 594; *Carter v Hind* (1853) 22 LTOS 116; *Whitbread v Smith* (1854) 3 De GM & G 727 at 739; *Stephens v Green, Green v Knight* [1895] 2 Ch 148, CA. In this case the consideration does not extend to the children of the marriage, who are volunteers and cannot enforce the settlement, unless they are parties to it (see *Joyce v Hutton* (1860) 11 I Ch R 123 (on appeal (1861) 12 I Ch R 71, Ir CA); *Green v Paterson* (1886) 32 ChD 95, CA; cf *Gandy v Gandy* (1885) 30 ChD 57, CA), or there is an executed trust in their favour (see *Joyce v Hutton* supra; *Green v Paterson* supra). See further PARA 615 post.

6 *Bayspole v Collins* (1871) 6 Ch App 228; cf *Ex p Hall* (1812) 1 Ves & B 112. See also *Ford v Stuart* (1852) 15 Beav 493; *Townend v Toker* (1866) 1 Ch App 446.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(i) Kinds of Settlements/605. Settlements for the benefit of children.

605. Settlements for the benefit of children.

In settlements under which a child¹ has an interest, express powers of maintenance, accumulation or advancement² may be inserted, but, even if there are no such powers, there are, subject to certain limitations, statutory powers for the same purposes³. Land in which a child has a beneficial interest in possession is in most cases settled land if the settlement was created on or before 1 January 1997⁴ and contained no express trust for sale, but is otherwise a trust of land⁵. Whichever statutory regime applies, the trustees are given special powers for the management of such land⁶. The court has power to vary settlements for the benefit of children of a marriage which is dissolved or annulled or in the event of judicial separation⁷.

A child cannot be a trustee, but, subject to certain limitations, a child may exercise a power to appoint a new trustee of a settlement⁸.

1 The age of majority, formerly 21, was reduced to 18 with effect from 1 January 1970: see the Family Law Reform Act 1969 s 1; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 1. As to the use of the word 'child' see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 3. See *Begg-MacBrearty (Inspector of Taxes) v Stilwell (Trustee of the GE Coke Settlement)* [1996] 4 All ER 205, [1996] 1 WLR 951, where the reduced age of majority was held to apply to trusts created in 1975 by the exercise of a special power of appointment contained in a 1959 settlement.

2 As to powers of maintenance, accumulation and advancement see PARA 667 post; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 58 et seq.

3 See PARA 667 post; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 58 et seq.

4 See the Settled Land Act 1925 s 1(1)(ii)(d); the Trusts of Land and Appointment of Trustees Act 1996 ss 1(1), 2; the Trusts of Land and Appointment of Trustees Act 1996 (Commencement) Order 1996, SI 1996/2974; and PARAS 676-677 post. See further REAL PROPERTY vol 39(2) (Reissue) PARAS 64-66.

5 See the Trusts of Land and Appointment of Trustees Act 1996 ss 1(1), 2; and PARA 676 post.

6 See PARAS 665-666 post; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARAS 54-57.

7 See PARA 603 note 1 ante.

8 See CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 52.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(i) Kinds of Settlements/606. Strict settlements and resettlements of land.

606. Strict settlements and resettlements of land.

Since 1 January 1997, it has not been possible to create new strict settlements of land within the meaning of the Settled Land Act 1925¹, and over time old strict settlements will die out². Historically, the object of strict settlements was to secure that the land should descend from father to son so that the land as a whole could not be alienated unless and until a father and son concurred in so doing. Alienation normally happened on the coming of age of an eldest son or other first tenant in tail in remainder³ expectant on the death of the tenant for life in possession, when a family arrangement⁴ was entered into and a resettlement of the land⁵ was executed for the purpose of giving effect to it⁶. However, for many years it has been impossible to settle land in such a way that it cannot be alienated, since by statute the estate owner in whom the legal estate is vested has an overriding power of disposition⁷. For this reason, and also in consequence of changed economic conditions, the creation of strict settlements had already become uncommon before 1 January 1997.

A settlement created by the exercise of a power of appointment in an existing strict settlement will usually be a strict settlement and not a trust of land, unless the deed of appointment provides otherwise⁸.

1 Ie within the meaning of the Settled Land Act 1925 s 1: see PARA 678 post.

2 See the Trusts of Land and Appointment of Trustees Act 1996 s 2(1) (see PARA 676 post); and the Trusts of Land and Appointment of Trustees Act 1996 (Commencement) Order 1996, SI 1996/2974. Charitable, ecclesiastical or public settlements of land and settlements with no relevant property are now trusts of land rather than strict settlements, whenever created: see the Trusts of Land and Appointment of Trustees Act 1996 s 2(4), (5), Sch 1; and PARAS 676-677 post.

3 As to entailed interests see PARA 715 et seq post; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

4 As to family arrangements see PARA 1002 et seq post.

5 As to the traditional provisions of resettlements see PARA 720 post; and as to resettlements restoring former life interests see PARA 764 post. As to the effect of resettlements on entitlement to portions see PARA 729 post.

6 The essential requirements of a resettlement do not differ from those of other family arrangements: see PARA 1007 et seq post.

7 See PARA 775 et seq post.

8 See the Trusts of Land and Appointment of Trustees Act 1996 s 2(2), (3); and PARA 676 post. As to powers of appointment see TRUSTS vol 48 (2007 Reissue) PARA 818 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(i) Kinds of Settlements/607. Protective settlements.

607. Protective settlements.

Protective settlements normally contain a more or less common form set of provisions designed so as to enable the principal beneficiary to enjoy the beneficial interest intended for him without allowing him any power of alienation¹. Such a settlement, if made by a third person, is valid against a beneficiary's trustee in bankruptcy², but not if made by the beneficiary himself³.

1 The usual provision employed for this purpose is that contained in the Trustee Act 1925 s 33 (as amended): see PARA 917 post.

2 *Re Ashby, ex p Wreford* [1892] 1 QB 872; *Re Throckmorton, ex p Eyston* (1877) 7 ChD 145, CA. See also BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 405.

3 See *Re Burroughs-Fowler, Burroughs-Fowler's Trustee v Burroughs-Fowler* [1916] 2 Ch 251; and PARA 916 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(i) Kinds of Settlements/608. Settlements made to avoid or mitigate the incidence of tax.

608. Settlements made to avoid or mitigate the incidence of tax.

Settlements are often made with a view to avoid or mitigate the incidence of income tax, capital gains tax or inheritance tax¹. Such settlements may be divided into two distinct categories. First, the tax legislation provides special status for a number of specific types of trust or settlement upon which tax privileges are expressly conferred². Secondly, settlements are capable of being used as part of schemes designed to secure a tax advantage which may not have been specifically contemplated by Parliament. This second category of settlements is coming under increased scrutiny by the Inland Revenue Commissioners and by the courts and, in recent years the powers of the courts to strike down such schemes as artificial have evolved significantly³. Further, Parliament frequently enacts specific anti-avoidance provisions to override the efficacy of such schemes⁴.

1 As to the fiscal consequences of settlements see further PARA 619 et seq post.

2 Eg accumulation and maintenance trusts (see the Inheritance Tax Act 1984 s 71; and INHERITANCE TAXATION vol 24 (Reissue) PARA 507); maintenance fund trusts (see s 77, Sch 4 (as amended); and INHERITANCE TAXATION vol 24 (Reissue) PARA 548-555); retirement benefit schemes (see the Income and Corporation Taxes Act 1988 Pt XIV Ch I (ss 590-612) (as amended); and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 747 et seq).

3 See *Ramsay v IRC* [1982] AC 300, [1981] 1 All ER 865, HL; *IRC v Burmah Oil Co Ltd* [1982] STC 30, (1981) 54 TC 200, HL; *Furniss v Dawson* [1984] AC 474, [1984] 1 All ER 530, HL; *Craven v White* [1989] AC 398, [1988] 3 All ER 495, HL; *Ensign Tankers (Leasing) Ltd v Stokes* [1992] 1 AC 655, [1992] 2 All ER 275; *IRC v McGuckian* [1997] 3 All ER 817, [1997] 1 WLR 991, HL; *IRC v Willoughby* [1997] 4 All ER 65, [1997] 1 WLR 1071, HL.

4 See eg the changes made to the Capital Gains Tax Act 1979 (repealed) by the Finance Act 1991 ss 83-92, Sch 16, which substantially reduced the scope for avoiding or deferring a liability to capital gains tax by the use of non-resident settlements. See now the Taxation of Chargeable Gains Act 1992 s 86, Sch 5 (both as amended). As to income tax anti-avoidance provisions generally see INCOME TAXATION vol 23(2) (Reissue) PARA 1569 et seq.

UPDATE

608 Settlements made to avoid or mitigate the incidence of tax

NOTE 2--Certain provisions of the 1988 Act Pt XIV Ch 1 (as amended) are replaced by provisions of the Income Tax (Earnings and Pensions) Act 2003. For destination of replaced provisions, see table, INCOME TAXATION vol 23(2) (Reissue) PARA 1900A.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(ii) Nature of the Settled Property/609. Settlements of realty and chattels real.

(ii) Nature of the Settled Property

609. Settlements of realty and chattels real.

The only estates in land which are capable of subsisting or of being conveyed or created at law are an estate in fee simple absolute in possession and a term of years absolute¹. All other estates in land take effect as equitable interests only².

Important changes were made by the Trusts of Land and Appointment of Trustees Act 1996 to settlements of land³. Prior to 1 January 1997⁴, a settlement of land took effect either as a strict settlement or as a trust for sale⁵. With limited exceptions the Act prevents the creation after that date of new strict settlements of land, although it preserves the status of most existing strict settlements⁶.

The Trusts of Land and Appointment of Trustees Act 1996 created a new regime for settlements of land other than strict settlements and land to which the Universities and College Estates Act 1925 applies⁷, and any such settlement is a 'trust of land' for the purpose of the Trusts of Land and Appointment of Trustees Act 1996⁸. Under that Act, existing express trusts for sale do not lose their status, nor is there any prohibition upon the creation of trusts for sale in the future⁹. Indeed, the definition of 'trust of land' expressly includes a trust for sale¹⁰. However, the Act makes great inroads upon the relevance of the description of a trust as a trust for sale¹¹. Trusts for sale implied by statute are reclassified as trusts of land with retrospective effect¹².

It is no longer possible to create entailed interests in land¹³, and any attempt to do so operates as a declaration that the land is held in trust absolutely for the person to whom the entailed interest was purportedly granted¹⁴.

If it is desired to settle leaseholds containing onerous covenants, they are usually brought into the settlement by subdemise to the trustees¹⁵.

An advowson or right of patronage of a benefice may be the subject of a settlement, but the statutory requirements relating to the transfer of patronage must be observed¹⁶.

1 See the Law of Property Act 1925 s 1(1); and REAL PROPERTY vol 39(2) (Reissue) PARA 45.

2 See *ibid* s 1(3); and REAL PROPERTY vol 39(2) (Reissue) PARA 46. As to the transitional provisions affecting settlements of land subsisting on 1 January 1926 see the Law of Property Act 1925 s 39, Sch 1 Pt II paras 3, 5, 6(c); and REAL PROPERTY vol 39(2) (Reissue) PARA 49 et seq.

3 See REAL PROPERTY vol 39(2) (Reissue) PARAS 64-69.

4 Ie the date on which the Trusts of Land and Appointment of Trustees Act 1996 came into force: see the Trusts of Land and Appointment of Trustees Act 1996 (Commencement) Order 1996, SI 1996/2974; and PARA 676 post.

5 See the Settled Land Act 1925 s 1 (as amended) (see PARA 675 post); and the Law of Property Act 1925 ss 34-36 (as originally enacted).

6 See the Trusts of Land and Appointment of Trustees Act 1996 ss 1(2), (3), 2(1); and PARAS 676-677 post. As to strict settlements see PARA 606 ante.

7 See EDUCATION vol 15(2) (2006 Reissue) PARA 1379.

8 See the Trusts of Land and Appointment of Trustees Act 1996 s 1; and REAL PROPERTY vol 39(2) (Reissue) PARA 66. For the meaning of 'trust of land' see PARA 676 note 5 post.

9 See *ibid* ss 1, 4; and REAL PROPERTY vol 39(2) (Reissue) PARA 66.

10 See *ibid* s 1(2); and REAL PROPERTY vol 39(2) (Reissue) PARA 66.

11 See in particular the abolition of the doctrine of conversion by *ibid* s 3 (see REAL PROPERTY vol 39(2) (Reissue) PARA 77); the implication into all trusts for sale of an unexcludable power in the trustees to postpone sale by s 4 (see REAL PROPERTY vol 39(2) (Reissue) PARA 66); and the repeal by s 25(2), Sch 4 of the statutory powers of trustees of a trust for sale contained in the Law of Property Act 1925 ss 28-29 (repealed) (see REAL PROPERTY vol 39(2) (Reissue) PARA 67).

12 See the Trusts of Land and Appointment of Trustees Act 1996 s 5(1), Sch 2; and REAL PROPERTY vol 39(2) (Reissue) PARA 66.

13 See PARA 677 post. As to entailed interests see PARA 715 et seq post; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

14 See the Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1 para 5; and PARA 677 post.

15 As to the settlement of leases see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 30; TRUSTS vol 48 (2007 Reissue) PARA 943.

16 As to the mode and effect of transferring an advowson see *Sherrard v Lord Harborough* (1753) Amb 165 at 166; and ECCLESIASTICAL LAW. As to rights of patronage of a benefice see ECCLESIASTICAL LAW.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(ii) Nature of the Settled Property/610. Settlements of equitable interests.

610. Settlements of equitable interests.

Equitable interests in land, such as beneficial interests under a strict settlement¹ or trust of land², an equitable mortgage and an equitable easement³, may be settled by assignment to trustees, who should give notice of the assignment to the trustees of the head settlement or the estate owner of the land affected (as the case may be) in order to perfect their interest⁴.

1 As to strict settlements see PARA 606 ante.

2 As to trusts of land see PARAS 609 ante, 676-677 post.

3 As to equitable mortgages see EQUITY vol 16(2) (Reissue) PARA 605; and as to equitable easements see EASEMENTS AND PROFITS À PRENDRE.

4 See the Law of Property Act 1925 s 137(1), (2) (as amended); and CHOISES IN ACTION vol 13 (2009) PARA 40 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(ii) Nature of the Settled Property/611. Settlements of personality.

611. Settlements of personality.

A trust is the usual method of creating successive interests in personality¹, and is essential for the creation of a settlement inter vivos, since at law a grant of chattels for life vests the whole legal interest in the grantee; moreover things which are exhausted by personal use, other than stock in trade of a business or farming stock, cannot be given for less than an absolute interest².

Although it was possible to create entailed interests in personality between 1925³ and 1 January 1997, it is no longer possible to do so, and any attempt to create an entailed interest in personality will operate as a declaration that the property is held in trust absolutely for the person to whom an entailed interest in the property was purportedly granted⁴.

1 See PARA 907 et seq post.

2 See EQUITY vol 16(2) (Reissue) PARA 608; GIFTS vol 52 (2009) PARA 224; PERSONAL PROPERTY vol 35 (Reissue) PARA 1230.

3 See the Law of Property Act 1925 s 130 (as originally enacted); and PERSONAL PROPERTY vol 35 (Reissue) PARA 1230. It was not possible to create entailed interests in personality before the commencement of that Act (except where, by virtue of the doctrine of conversion, the property was regarded as land, eg in the case of money settled upon trust for the purchase of freehold property): see *Leventhorpe v Ashbie* (1635) 1 Roll Abr 831.

4 See the Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1 para 5; and PARA 677 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(iii) Manner of Creation of Settlements/612. Settlements created by deed or will.

(iii) Manner of Creation of Settlements

612. Settlements created by deed or will.

Settlements by individuals may be made either by deed or by will¹. A settlement may be created by a deed poll, but more commonly it is created by a deed to which the intending settlor, the intended trustees of the settlement, and sometimes, and generally in the case of a marriage settlement, some of the beneficiaries, are parties. The settlement may, and in the case of a settlement for the purposes of the Settled Land Act 1925 must, be created by more than one deed, the assurance being effected by one deed and the trusts of the assured property declared by another². The general rules as to interpretation of deeds apply to settlements created by deed³.

Settlements which do not relate to land or to any interest in it⁴ may be created by parol so, for example, it is possible to create a settlement of personalty orally⁵.

1 The doctrine of election applies to settlements created by deed as well as to those created by will: see EQUITY vol 16(2) (Reissue) PARA 727. As to the form of settlements by deed see PARAS 688 et seq, 898 post. As to the form of settlements created by will see PARA 697 post.

2 See PARA 688 et seq post.

3 As to the general rules of interpretation see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 164 et seq.

4 Ie settlements which are therefore not within the scope of the Law of Property Act 1925 s 53(1)(b): see TRUSTS vol 48 (2007 Reissue) PARA 644.

5 As to settlements of personalty see PARA 907 et seq post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(iii) Manner of Creation of Settlements/613. Settlements created by statute.

613. Settlements created by statute.

Settlements are sometimes created by either public or private Act of Parliament. A public Act creating a settlement is for the purpose of rewarding eminent public services by grants of land¹, and the Acts creating them are passed through Parliament in the same manner and with the same formalities as other public bills².

A private Act creating a settlement is known as an 'estate bill', being one of the class of personal bills which are introduced in the first instance in the House of Lords³. Formerly, recourse was often had to private Acts in order to relieve the owner of an estate from various kinds of interests by which it was encumbered, or to confer on him some administrative power, or to free the estate from the claims of persons under disability. However, by reason of the wider powers now conferred on the courts, it will seldom be necessary in future to resort to those private Acts⁴.

1 Eg in the cases of the Duke of Marlborough, the Duke of Wellington and Lord Nelson. It may be observed that the entails made by such Acts are indestructible: see 6 Anne c 6 (1706) s 5; 54 Geo 3 c 161 (1814) s 28; 53 Geo 3 c 134 (1813) s 1. As to alienation see GIFTS vol 52 (2009) PARA 222. The provision can, of course, subsequently be modified by statute: see eg the Trafalgar Estates Act 1947; the Wellington Museum Act 1947; and REAL PROPERTY vol 39(2) (Reissue) PARA 133. A more recent example of a statutory settlement is the Chevening Estate Act 1959 (see REAL PROPERTY vol 39(2) (Reissue) PARA 65).

2 See PARLIAMENT vol 34 (Reissue) PARA 736 et seq.

3 See PARLIAMENT vol 34 (Reissue) PARA 872 et seq.

4 See the Settled Land Act 1925 s 64 (as amended) (see PARA 671 post); the Trustee Act 1925 s 57 (see PARA 672 post; and TRUSTS vol 48 (2007 Reissue) PARA 1061); and the Variation of Trusts Act 1958 s 1 (as amended) (see PARA 674 post; and TRUSTS vol 48 (2007 Reissue) PARA 1062 et seq).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(iv) Validity and Avoidance of Settlements/614. Execution of settlements.

(iv) Validity and Avoidance of Settlements

614. Execution of settlements.

A settlement must be executed by the settlor¹, and it is generally expedient that it should be executed by the trustees. As a rule, execution by a beneficiary is only important if the beneficiary is contracting to do something², but, in the case of a marriage settlement, it is customary and expedient for the deed to be executed by both intending spouses, even if the property settled belongs to one of them only³.

1 Non-execution by some of the contracting parties does not necessarily prevent a settlement from binding those parties who execute the deed: *M'Neill v Cahill* (1820) 2 Bl 228, HL; *Lady Naas v Westminster Bank Ltd* [1940] AC 366, [1940] 1 All ER 485, HL. As to the formalities of execution see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 27 et seq.

2 *Lady Naas v Westminster Bank Ltd* [1940] AC 366, [1940] 1 All ER 485, HL.

3 See further PARA 628 et seq post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(iv) Validity and Avoidance of Settlements/615.
Enforceability of settlements.

615. Enforceability of settlements.

A settlement is fully constituted when the settlor has done everything to be done by him to transfer the property to trustees upon trusts declared by him, or when he has declared himself to be a trustee of the property¹. Once the settlement is fully constituted, then, unless a power of revocation has been reserved, the settlement is irrevocable². For this purpose it is immaterial whether the settlement is made for valuable consideration or is voluntary, since, if a voluntary settlement is unaffected by any statutory enactment and is complete, bona fide and valid, there is no distinction between such a settlement and one executed for valuable consideration³. Further, a settlement which has been fully constituted binds the settlor, if he should afterwards obtain possession of the settled property, to hold it upon the trusts of the settlement⁴. However, until it is fully constituted, a settlement can be enforced, if at all, only as a contract to settle⁵, or if the property vests in the trustees of the settlement⁶.

1 The test is whether any act remains to be done by the settlor, and not by the beneficiaries or trustees: see GIFTS vol 52 (2009) PARA 267. As to completed and incomplete gifts see GIFTS vol 52 (2009) PARA 267 et seq. A settlement of property which is not transferred to the trustees may contain a provision which can be construed as a declaration of trust of the property pending its transfer, in which case the settlement will be enforceable: *Re Ralli's Will Trusts, Re Ralli's Marriage Settlement, Calvocoressi v Rodocanachi* [1964] Ch 288, [1963] 3 All ER 940. As to the requisites for a valid declaration of trust see *Paul v Constance* [1977] 1 All ER 195, [1977] 1 WLR 527, CA.

2 *Paul v Paul* (1882) 20 ChD 742, CA. Cf *Re Bowden, Hulbert v Bowden* [1936] Ch 71; *Re Adlard, Taylor v Adlard* [1954] Ch 29, [1953] 2 All ER 1437. See also GIFTS vol 52 (2009) PARA 257.

3 *Dickinson v Burrell, Stourton v Burrell* (1866) LR 1 Eq 337 at 343; *Paul v Paul* (1882) 20 ChD 742, CA.

4 *Re Patrick, Bills v Tatham* [1891] 1 Ch 82, CA.

5 As to contracts for settlements see PARA 627 et seq post. An incomplete voluntary settlement may be annulled by the settlor: *Beatson v Beatson* (1841) 12 Sim 281. If there is a covenant by the settlor with trustees to settle property for the benefit of volunteers, the court will not compel the trustees to sue for damages, and may direct them not to sue: *Re Pryce, Neville v Pryce* [1917] 1 Ch 234; *Re Kay's Settlement, Broadbent v Macnab* [1939] Ch 329, [1939] 1 All ER 245; *Re Cook's Settlement Trusts, Royal Exchange Assurance v Cook* [1965] Ch 902, [1964] 3 All ER 898. But cf *Beswick v Beswick* [1968] AC 58, [1967] 2 All ER 1197, HL. As to the enforcement of marriage settlements see PARA 661 post.

6 *Re Ralli's Will Trusts, Re Ralli's Marriage Settlement, Calvocoressi v Rodocanachi* [1964] Ch 288, [1963] 3 All ER 940.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(iv) Validity and Avoidance of Settlements/616. Avoidance of settlements.

616. Avoidance of settlements.

Where a settlement is made by an individual at a time when he is insolvent, either at an undervalue (for example for no consideration or in consideration of marriage) or as a preference to any of the settlor's creditors during a specified period¹ ending with the presentation of a bankruptcy petition, the court will make an order restoring the position upon the application of the settlor's trustee in bankruptcy². Further, where a settlement is entered into at any time at an undervalue for the purpose of defrauding creditors, the court has a wide discretion, upon the application of the settlor's trustee in bankruptcy or in certain circumstances of the victim of the transaction, to make an order (such as an order setting aside the settlement) for the purpose of restoring the position and protecting the creditors³. Apart from the bankruptcy laws, any voluntary settlement of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser⁴.

A settlement, whether voluntary or not, may be set aside at the suit of the settlor himself if it is made in consequence of fraud, duress, misrepresentation or undue influence⁵. A settlement, whether voluntary or not, may also be rectified if it does not give effect to the intention of the parties⁶.

1 Le either five years, two years or six months, as appropriate: see the Insolvency Act 1986 s 341; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 660.

2 See ibid ss 339-340; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 663 et seq.

3 See ibid s 423; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 664 et seq.

4 See the Law of Property Act 1925 s 173; and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 868 et seq.

5 See EQUITY vol 16(2) (Reissue) PARA 412 et seq; and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 838 et seq. As to misrepresentation see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 701 et seq; and as to undue influence see PARA 618 post.

6 See MISTAKE vol 77 (2010) PARA 52 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(iv) Validity and Avoidance of Settlements/617. Void trusts.

617. Void trusts.

Trusts or limitations contained in a settlement may be void on the ground of uncertainty or public policy or because they infringe the rule against perpetuities¹. Such trusts or limitations will be void for uncertainty if the objects are not defined with sufficient particularity², or are left wholly to the discretion of the trustees³, unless the trusts are exclusively for charitable purposes⁴.

A disposition in favour of illegitimate children not in being when the disposition takes effect was void at common law as being contrary to public policy⁵. However, this rule has been abolished as respects dispositions made on or after 1 January 1970⁶.

In addition, the interests created by a settlement made before 16 July 1964 are void as infringing the rule against perpetuities unless they must vest indefeasibly in interest, if they vest at all, within the period of a life in being and 21 years after the determination of that life; the interests created by a settlement made on or after that date are void to the extent that they do not vest in interest within that period, or within an alternative period not exceeding 80 years specified in the settlement⁷.

1 As to the rule against perpetuities see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1008 et seq.

2 *James v Allen* (1817) 3 Mer 17; *McPhail v Doulton* [1971] AC 424, [1970] 2 All ER 228, HL; *Re Baden's Deed Trusts (No 2)* [1973] Ch 9, [1972] 2 All ER 1304, CA. See also POWERS; and TRUSTS vol 48 (2007 Reissue) PARA 649 et seq.

3 See *Chichester Diocesan Fund and Board of Finance Inc v Simpson* [1944] AC 341, [1944] 2 All ER 60, HL; and TRUSTS vol 48 (2007 Reissue) PARA 607. Trustees can, however, be given power to appoint for such persons or purposes as they determine: *Re Hay's Settlement Trusts* [1981] 3 All ER 786, [1982] 1 WLR 202. As to powers of appointment see TRUSTS vol 48 (2007 Reissue) PARA 738.

4 See CHARITIES vol 8 (2010) PARA 103.

5 See *Blodwell v Edwards* (1596) Cro Eliz 509; *Lomas v Wright* (1833) 2 My & K 769; *Wilkinson v Wilkinson* (1842) 1 Y & C Ch Cas 657; *Thompson v Thomas* (1891) 27 LR Ir 457. This rule did not invalidate a disposition in favour of illegitimate children in existence at the date of the settlement, including a child en ventre sa mère at the date of the settlement: *Ebborn v Fowler* [1909] 1 Ch 578, CA. As to illegitimate children see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 125 et seq. As to when a reference to children in a disposition includes illegitimate children see PARA 731 post.

6 See the Family Law Reform Act 1969 s 15(7) (repealed); and WILLS vol 50 (2005 Reissue) PARA 643.

7 See the Perpetuities and Accumulations Act 1964 ss 1, 3-5 (s 4 as amended); and PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1001 et seq. The enjoyment of a person who has a vested interest under a settlement cannot be postponed by the insertion of a trust for accumulation which is exclusively for his benefit: see *Saunders v Vautier* (1841) 10 LJ Ch 354; *Wharton v Masterman* [1895] AC 186, HL; and PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1120. For settlements which came into operation before 1 January 1926 there was the further restriction that, if land was limited to an unborn person during his life, a remainder could not be limited to the children or other issue of such unborn person, either at law or in equity: see *Whitby v Mitchell* (1890) 44 ChD 85, CA; *Re Nash, Cook v Frederick* [1910] 1 Ch 1, CA; and PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1003. This rule was abolished as regards limitations or trusts created by an instrument coming into operation after 31 December 1925 by the Law of Property Act 1925 s 161: see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1003.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(iv) Validity and Avoidance of Settlements/618. Settlements for the protection of the settlor.

618. Settlements for the protection of the settlor.

Settlements are sometimes made for the protection of the settlor himself. Such a settlement is liable to be impeached on any of the grounds on which any voluntary settlement may be impeached¹. In particular, such a settlement may be set aside by the settlor on the ground of undue influence², the doctrine of undue influence not being confined to a case where the influence is exerted to secure a benefit to the person exerting it, but extending also to cases in which a person of imperfect judgment is placed or places himself under the direction of one possessing greater experience or such force as is inherent in such a relation as, for example, a father and his child³. Where a settlement is executed shortly after the coming of age of the settlor, it may be difficult to support it⁴. If the settlor is competent to understand and does understand the deed⁵, it will not be set aside merely because it contains provisions which are unusual, or which the court may think ought not to have been inserted⁶, but those who support the deed are bound to show either that the deed is in all respects proper, or, if it contains anything special or unusual, that the settlor understood and approved of it⁷, and, if it should appear that the settlor did not understand, the settlement will be set aside⁸. If the settlor has understood the settlement, but his attention has not been called to the omission of any power of disposition in default of issue, the settlement may be rectified by the insertion of such a power⁹. It is desirable, but not necessary, that a settlement of this nature should contain a power of revocation¹⁰. The absence of a power of revocation is a circumstance to be taken into account, and is of more or less weight according to the facts of the particular case¹¹.

1 See PARA 616 ante.

2 As to undue influence see EQUITY vol 16(2) (Reissue) PARA 417 et seq; MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 839 et seq.

3 *Bullock v Lloyds Bank Ltd* [1955] Ch 317, [1954] 3 All ER 726.

4 *Everitt v Everitt* (1870) LR 10 Eq 405. See also *Re Pauling's Settlement Trusts, Younghusband v Coutts & Co* [1964] Ch 303, [1964] 3 All ER 1, CA.

5 As to the degree of understanding necessary to make a gift see *Re Beaney* [1978] 2 All ER 595, [1978] 1 WLR 770. As to capacity to make a settlement see PARA 625 post.

6 *Dutton v Thompson* (1883) 23 ChD 278, CA. See also *James v Couchman* (1885) 29 ChD 212; *Re Brocklehurst, Hall v Roberts* [1978] Ch 14, [1978] 1 All ER 767, CA.

7 *Phillips v Mullings* (1871) 7 Ch App 244.

8 *Moore v Prance* (1851) 9 Hare 299; *Prideaux v Lonsdale* (1863) 1 De GJ & Sm 433; *Dutton v Thompson* (1883) 23 ChD 278, CA. However, this principle may not apply if it is shown that the settlor was content to rely on his advisers: *Lovell v Wallis (No 2)* (1844) 50 LT 681.

9 *James v Couchman* (1885) 29 ChD 212.

10 *Everitt v Everitt* (1870) LR 10 Eq 405. As to the binding effect of a settlement which contains no power of revocation see PARA 615 ante. However, a power of revocation may have adverse tax consequences: see eg the Income and Corporation Taxes Act 1988 s 660A (as added) (income arising under settlement where settlor retains an interest deemed to be that of settlor for income tax purposes) (see INCOME TAXATION vol 23(2) (Reissue) PARAS 1553-1556); the Taxation of Chargeable Gains Act 1992 s 77 (as substituted and amended) (charge to capital gains tax on settlor with interest in settlement) (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARAS 131-132); and the Finance Act 1986 s 102 (as amended) (gifts with reservation included in donor's estate for inheritance tax purposes) (see INHERITANCE TAXATION vol 24 (Reissue) PARA 446 et seq).

11 *Forshaw v Welsby* (1860) 30 Beav 243; *Toker v Toker* (1863) 3 De GJ & Sm 487; *Mountford v Keene* (1871) 24 LT 925; *Hall v Hall* (1873) 8 Ch App 430; *Henshall v Fereday* (1873) 29 LT 46; *Henry v Armstrong* (1881) 18 ChD 668.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(v) Fiscal Consequences of Settlements/619. Income tax.

(v) Fiscal Consequences of Settlements

619. Income tax.

One of the legal consequences of settling income-producing property upon the trusts of an English settlement¹, under which persons other than the settlor become beneficially entitled to the income, is that the income ceases to be the income of the settlor as a matter of property law². However, by virtue of anti-avoidance provisions in the income tax legislation, this is not necessarily the consequence as between the parties to the settlement and the Inland Revenue Commissioners³. First, the legislation taxes income arising during the lifetime of the settlor as his income⁴, if it arises under a settlement⁵ under which the settlor, and in certain circumstances his spouse, has an interest⁶. Secondly, there are provisions in the legislation for taxing income which arises under a settlement, and which is paid during the lifetime of the settlor to or for the benefit of his unmarried children under the age of majority, as the settlor's income⁷. Thirdly, capital sums paid to a settlor, or to his spouse, under a settlement or by a body connected with a settlement may in certain circumstances be taxed as income⁸.

1 This paragraph is not concerned with the transfer of effects abroad; as to the special provisions of the income tax legislation directed to the prevention of tax avoidance by the transfer of income-producing assets to persons abroad see INCOME TAXATION vol 23(2) (Reissue) PARA 1607 et seq.

2 See INCOME TAXATION vol 23(2) (Reissue) PARA 1550.

3 See the text and notes 4-8 infra.

4 There are provisions enabling a settlor to recover tax paid by him either from the trustees of the settlement or from the beneficiaries: see the Income and Corporation Taxes Act 1988 s 660D (as added); and INCOME TAXATION vol 23(2) (Reissue) PARA 1558 et seq.

5 For this purpose, 'settlement' includes any disposition, trust, covenant, agreement, arrangement or transfer of assets: see ibid s 660G(1) (as added); and INCOME TAXATION vol 23(2) (Reissue) PARA 1555

6 See ibid s 660A (as added); and INCOME TAXATION vol 23(2) (Reissue) PARAS 1553-1556.

7 See ibid s 660B (as added); and INCOME TAXATION vol 23(2) (Reissue) PARA 1557. As to the age of majority see PARA 605 note 1 ante.

8 See ibid ss 677, 678 (as amended); and INCOME TAXATION vol 23(2) (Reissue) PARAS 1563-1564.

UPDATE

619 Income tax

NOTES 4-8--Income and Corporation Taxes Act 1988 ss 660A, 660B, 660D, 677, 678 replaced by provisions of the Income Tax (Trading and Other Income) Act 2005. For destination of replaced provisions see table, INCOME TAXATION vol 23(2) (Reissue) PARA 1900C post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(v) Fiscal Consequences of Settlements/620. Income tax allowances and reliefs.

620. Income tax allowances and reliefs.

The allowances and reliefs appropriate to the personal circumstances of a beneficiary to whom income is paid under a settlement are relevant in calculating the amount of income tax which this income should bear¹. However, the administrative mechanism by which these allowances and reliefs are taken into account varies according to the type of settlement and nature of the income, and can give rise to considerable complexities². For example, in the case of an annuity payable 'free of tax'³ to a beneficiary, it is important to ensure that he does not, by virtue of his allowances and reliefs, receive more than his entitlement⁴.

A tenant for life⁵ of settled land is entitled, in the absence of any provision in the settlement to the contrary, to the benefit of income tax allowances in respect of money spent on improvements to the trust property, even if the cost of these improvements has been borne at his direction out of capital money arising under the Settled Land Act 1925⁶.

1 See INCOME TAXATION vol 23(2) (Reissue) PARA 1550.

2 See INCOME TAXATION vol 23(2) (Reissue) PARA 1548 et seq.

3 As to the effect of gifts 'free of tax' see INCOME TAXATION vol 23(1) (Reissue) PARA 505.

4 *Re Batley (No 2), Public Trustee v Hert* [1952] Ch 781, [1952] 2 All ER 562, CA. Cf *Re Pettit, Le Fevre v Pettit* [1922] 2 Ch 765; *Re Lyons, Barclays Bank Ltd v Lyons* [1952] Ch 129, [1952] 1 All ER 34, CA, which are examples of the 'free of tax' cases. See also RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 861.

5 As to tenants for life see PARA 761 et seq post.

6 *Re Pelly's Will Trusts, Ransome v Pelly* [1957] Ch 1, [1956] 2 All ER 326, CA. See also PARA 944 note 4 post. For the meaning of 'capital money arising under the Act' see PARA 795 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(v) Fiscal Consequences of Settlements/621. Chargeable gains.

621. Chargeable gains.

For the purposes of tax due on chargeable gains¹, a transfer into a settlement, whether revocable or irrevocable², is a disposal of the entire property which then becomes settled property, notwithstanding that the donor has some interest as a beneficiary under the settlement, and notwithstanding that he is a trustee, or the sole trustee, of the settlement³.

Generally, tax due on chargeable gains accruing upon disposals of settled property by the trustees is the liability of the trustees⁴. However, if the settlor and in certain circumstances his spouse has an interest in the settlement, those gains are treated as accruing to the settlor and not to the trustees⁵.

There is a deemed disposal when a person becomes absolutely entitled to any settled property as against the trustee⁶, but there is an exemption from liability where the deemed disposal occurs on the death of a person entitled to a life interest in possession⁷. There is also a deemed disposal, on the termination, on the death of a person entitled to it, of a life interest in possession in settled property, in relation to assets not then ceasing to be settled property; but there is exemption from liability on that disposal⁸. Generally, in the case of a settlement where the trustees are resident and ordinarily resident in the United Kingdom, no chargeable gain accrues on the disposal of an interest created by or arising under a settlement⁹.

1 Formerly known as capital gains tax: see generally the Taxation of Chargeable Gains Act 1992; and CAPITAL GAINS TAXATION. As to the liability of trustees see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 112 et seq.

2 As to revocable and irrevocable settlements see PARA 615 ante.

3 See the Taxation of Chargeable Gains Act 1992 s 70; and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 120. As to the position in relation to the creation of or transfer into a settlement by trustees in the exercise of powers conferred upon them in the transferor settlement see *Roome v Edwards* [1982] AC 279, [1981] 1 All ER 736, HL; *Bond v Pickford* [1983] STC 517, 57 TC 301, CA; *Swires v Renton* [1991] STC 490, 64 TC 315. Unless the context otherwise requires, and subject to the Taxation of Chargeable Gains Act 1992 s 66(4) (see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 105), 'settled property' means any property held in trust other than nominee property: see s 68; and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 117. In certain circumstances, the transferor can elect that any gain on the disposal to the trustees of the settlement is to be held over, in which case the trustees' acquisition cost is treated as reduced by the amount of the gain which would otherwise have accrued to the transferor on the disposal: see ss 165, 260 (both as amended); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARAS 124, 405. If the gains are not held over, the settlor is primarily liable for tax upon the disposal into the settlement, although the trustees are liable in certain circumstances: see s 282; and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 104.

4 See CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 127.

5 See the Taxation of Chargeable Gains Act 1992 s 77 (as substituted and amended); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 131. See also, in the case of offshore settlements, s 86 (as amended) (charge to tax on settlor with an interest), s 87 (as amended) (charge to tax on beneficiaries receiving capital payments from trustees); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 147 et seq.

6 See *ibid* s 71(1); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 122. As to when a person becomes absolutely entitled as against the trustee see s 60(2); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 113. See also *Crowe v Appleby* [1976] 2 All ER 914, [1976] 1 WLR 885, CA.

7 See the Taxation of Chargeable Gains Act 1992 s 73(1) (as amended); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 122. If the life interest is an interest in part only of the settled property, the exemption from liability does not apply, but any chargeable gain is proportionately reduced: see s 73(2) (as amended); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 122. Neither does the exemption from liability apply if the

gain on the disposal to the trustees was held over (see note 3 supra), but the chargeable gain on the death of the person entitled to the life interest is restricted to the amount of the held-over gain or a corresponding part of it: see s 74(2); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 122.

8 See *ibid* s 72; and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 121. If the life interest is in part only of the settled property, the deemed disposal is only in respect of a corresponding part of the assets: see s 72(1); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 121. Also the exemption from liability does not apply if the gain on the disposal to the trustees was held over (see note 3 supra), but the chargeable gain on the death of the person entitled to the life interest is restricted as mentioned in note 7 supra.

9 See *ibid* ss 76(1) (as amended), 85(1); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 163. This includes in particular an annuity or life interest, and the reversion to an annuity or life interest, but there is an exception where the interest disposed of has previously been acquired for a consideration in money or money's worth, other than consideration consisting of another interest under the settlement: see s 76(1) (as amended); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 163. As to the liability where a person who has acquired an interest for consideration subsequently becomes absolutely entitled to the settled property see s 76(2); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 163. Further, anti-avoidance provisions operate in the context of repatriated foreign settlements and transfers of beneficial interests to non-residents: see CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 159 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(v) Fiscal Consequences of Settlements/622. Inheritance tax.

622. Inheritance tax.

For the purposes of inheritance tax¹, the creation of a settlement² may constitute a transfer of value³, and, if so, it may constitute a chargeable transfer⁴.

The legislation draws a distinction between settlements with an interest in possession and settlements without an interest in possession⁵. An interest in possession may subsist in whole or in part only of settled property⁶. In respect of property comprised in a settlement where there is an interest in possession, liability to inheritance tax may arise⁷ on the termination of an interest in possession⁸, and on the disposal of an interest in possession⁹. In the case of settled property in which no interest in possession subsists, a periodic charge arises at ten-yearly intervals¹⁰, and there is also a charge where property ceases to be settled property in which no interest in possession subsists (whether it ceases to be comprised in the settlement or otherwise)¹¹, or on the trustees making a disposition reducing the value of the settled property in which no such interest subsists¹². There will usually be no transfer of value upon the termination of an interest under a settlement without an interest in possession, although there may be a chargeable transfer upon the death of a settlor with an interest in the settlement¹³. Certain accumulation and maintenance trusts¹⁴ where no interest in possession subsists are in a special position¹⁵.

A person having a limited interest in any property who pays the inheritance tax attributable to the value of that property is entitled to a like charge as if the tax so attributable had been raised by means of a mortgage to him¹⁶. Any money held on the trusts of a settlement may be expended in paying the tax attributable to the value of any property comprised in the settlement and held on the same trusts¹⁷.

1 As to inheritance tax generally see the Inheritance Tax Act 1984; and INHERITANCE TAXATION; and as to inheritance tax in relation to settled property see INHERITANCE TAXATION vol 24 (Reissue) PARA 476 et seq.

2 For the meaning of 'settlement' see ibid s 43(2); and INHERITANCE TAXATION vol 24 (Reissue) PARA 477.

3 For the meaning of 'transfer of value' see ibid s 3; and INHERITANCE TAXATION vol 24 (Reissue) PARA 409. One situation where the creation of a settlement does not constitute a transfer of value is where the settlor remains beneficially entitled to an interest in possession in the settled property, as he will be deemed to be beneficially entitled to the settled property: see s 49(1); and INHERITANCE TAXATION vol 24 (Reissue) PARA 480.

4 For the meaning of 'chargeable transfer' see ibid s 2; and INHERITANCE TAXATION vol 24 (Reissue) PARA 408. As to exempt transfers see INHERITANCE TAXATION vol 24 (Reissue) PARA 515 et seq. The creation of a settlement with a qualifying interest in possession will usually be potentially exempt: see s 3A (as added and amended); and INHERITANCE TAXATION vol 24 (Reissue) PARA 442 et seq.

5 As to settlements with an interest in possession see INHERITANCE TAXATION vol 24 (Reissue) PARA 479 et seq; and as to settlements without an interest in possession see INHERITANCE TAXATION vol 24 (Reissue) PARA 491 et seq.

6 See the Inheritance Tax Act 1984 s 50; and INHERITANCE TAXATION vol 24 (Reissue) PARA 482.

7 As to the rate of tax see INHERITANCE TAXATION vol 24 (Reissue) PARA 407 et seq; and as to the persons liable for the payment of tax see INHERITANCE TAXATION vol 24 (Reissue) PARA 634 et seq.

8 See the Inheritance Tax Act 1984 s 52; and INHERITANCE TAXATION vol 24 (Reissue) PARA 486. As to the termination of an interest in possession in particular circumstances see INHERITANCE TAXATION vol 24 (Reissue) PARA 488-490.

- 9 See *ibid* s 51; and INHERITANCE TAXATION vol 24 (Reissue) PARA 487.
- 10 See *ibid* s 64; and INHERITANCE TAXATION vol 24 (Reissue) PARA 496.
- 11 See *ibid* s 65(1)(a); and INHERITANCE TAXATION vol 24 (Reissue) PARA 499.
- 12 See *ibid* s 65(1)(b); and INHERITANCE TAXATION vol 24 (Reissue) PARA 499.
- 13 See the Finance Act 1986 s 102 (see INHERITANCE TAXATION vol 24 (Reissue) PARA 448); and the Inheritance Tax (Double Charges Relief) Regulations 1987, SI 1987/1130 (see INHERITANCE TAXATION vol 24 (Reissue) PARA 596).
- 14 See the Inheritance Tax Act 1984 s 71; and INHERITANCE TAXATION vol 24 (Reissue) PARA 507.
- 15 The creation of such a settlement is usually a potentially exempt transfer: see *ibid* s 3A (as added and amended); and INHERITANCE TAXATION vol 24 (Reissue) PARA 442 et seq. Such settlements are (among other things) not subject to the ten-yearly periodic charge (see ss 58(1)(b), 64; and INHERITANCE TAXATION vol 24 (Reissue) PARA 491), and in some cases there is no charge where the property ceases to be subject to the accumulation and maintenance trust (see s 71(3), (4); and INHERITANCE TAXATION vol 24 (Reissue) PARA 507).
- 16 See *ibid* s 212(2); and INHERITANCE TAXATION vol 24 (Reissue) PARA 652. As to the creation of a legal mortgage see PARA 767 post.
- 17 See *ibid* s 212(3); and INHERITANCE TAXATION vol 24 (Reissue) PARA 652.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(vi) Stamp Duty and Costs/623. Stamp duties.

(vi) Stamp Duty and Costs

623. Stamp duties.

The liability to stamp duty of instruments effecting settlements or executed in relation to settlements is the subject of special statutory provisions discussed elsewhere in this work¹. A voluntary disposition bearing the appropriate certificate is exempt from duty and from adjudication². A conveyance on sale inter vivos is liable to ad valorem duty and may, without penalty, be stamped within 30 days after execution or 14 days after assessment³. A declaration of trust is liable to fixed duty⁴.

Nothing in the Settled Land Act 1925 operates to impose any stamp duty on a vesting or other assent⁵, and no stamp duty is payable in respect of a vesting order made in place of a vesting or other assent⁶.

1 See STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1001 et seq.

2 See STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1002.

3 See STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1027. As to the time for stamping instruments see STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1020.

4 See STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1078.

5 For the meaning of 'vesting assent' see PARA 690 note 8 post.

6 See the Settled Land Act 1925 ss 12(2), 14(2), 37, Sch 2 para 2(2). No ad valorem stamp duty is payable in respect of a vesting deed or order made for giving effect to a settlement existing on 1 January 1926: Sch 2 para 1(8).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(1) IN GENERAL/(vi) Stamp Duty and Costs/624. Costs of preparing settlement.

624. Costs of preparing settlement.

There is a usage that an intending husband pays the costs of the solicitors of his intended wife in respect of the preparation and execution of a marriage settlement¹, and this usage requires the husband to allow the wife's solicitors to prepare the settlement². 'Marriage settlement' in this respect includes any document necessary for the completion of a marriage settlement, any muniments of title or documents of that kind without which the marriage settlement is not complete; and so for instance where real estate is conveyed to trustees upon the trusts of an indenture of even date, the two documents comprise one marriage settlement³.

1 *Helps v Clayton* (1864) 17 CBNS 553; *Re Lawrance, Bowker v Austin* [1894] 1 Ch 556 at 558-559 per Kekewich J. As to marriage settlements see PARA 628 et seq post.

2 *Helps v Clayton* (1864) 17 CBNS 553. A similar practice applies in the case of marriage articles, but a strict settlement of land, even if it contains provisions in favour of a husband or wife not otherwise interested in the land, is usually prepared by the solicitor of and at the expense of the settlor: see the Opinion of the Council of the Law Society dated 3 March 1927. Note that it is no longer possible to create strict settlements of land: see PARA 676 post.

3 *Re Lawrance, Bowker v Austin* [1894] 1 Ch 556 at 558 per Kekewich J.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(2) CAPACITY TO MAKE A SETTLEMENT/625. Capacity in general.

(2) CAPACITY TO MAKE A SETTLEMENT

625. Capacity in general.

In general, any person who can hold and dispose of property can make a settlement of property¹, but there are certain classes of person who are in law either incapable of making a settlement or whose capacity is limited to some extent.

An alien can make a settlement of any real and personal property which he is not by statute prohibited from owning².

The property of any person who has been adjudicated bankrupt passes from him and vests in his trustee in bankruptcy³. It follows that he cannot make any disposition of his property by way of settlement and this disability lasts until an order is made for his discharge⁴.

A child cannot make a binding settlement, whether on marriage or otherwise⁵.

A contract to settle property in consideration of marriage by a person suffering from such mental disorder as renders him incapable of understanding the transaction is good if the other party is not aware of the settlor's mental disorder⁶.

A deed of settlement by a person suffering from such mental disorder as to be incapable of understanding⁷ its nature and contents is void at law, but a disposition during a lucid interval is valid; a settlement by a person suffering from mental disorder might be set aside in equity, even if it is not void at law⁸.

1 See CONTRACT vol 9(1) (Reissue) PARA 630; PERSONAL PROPERTY vol 35 (Reissue) PARA 1231; REAL PROPERTY vol 39(2) (Reissue) PARA 229 et seq; SALE OF LAND vol 42 (Reissue) PARA 64 et seq. As to the former rules relating to married women see MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

2 See BRITISH NATIONALITY, IMMIGRATION AND ASYLUM vol 4(2) (2002 Reissue) PARA 13.

3 See the Insolvency Act 1986 s 306; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 391.

4 As to property devolving on a bankrupt before discharge see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 445.

5 See CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 82. As to settlements made before 1970 by children with the sanction of the court see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 85. As to the age of majority see PARA 605 note 1 ante.

6 See MENTAL HEALTH vol 30(2) (Reissue) PARA 602 et seq. Cf *Imperial Loan Co v Stone*[1892] 1 QB 599, CA.

7 As to the degree of understanding required to make a gift see *Re Beaney*[1978] 2 All ER 595, [1978] 1 WLR 770; *Simpson v Simpson*[1992] 1 FLR 601, [1989] Fam Law 20.

8 See MENTAL HEALTH vol 30(2) (Reissue) PARA 596 et seq; EQUITY vol 16(2) (Reissue) PARA 432.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(2) CAPACITY TO MAKE A SETTLEMENT/626. Settlements by trustees.

626. Settlements by trustees.

Trustees of a settlement may properly settle funds advanced either under an express power of advancement contained in the settlement¹ or under the statutory power of advancement where that applies². Such settlements may be made whenever the particular circumstances of the case warrant that course as being for the benefit of the object of the power³.

Since the effect of an exercise of a power of advancement is to take the money advanced out of the original settlement, a settlement created in exercise of such a power may contain trusts not only for the beneficiary in whose favour the power is exercised but also for other persons such as his wife and issue⁴. There is a view that, unless the original power permits a delegation of powers and discretions, a settlement made in exercise of a special power of appointment cannot contain any discretionary trusts or powers, other than the ordinary power of advancement⁵, since such trusts or powers would infringe the principle *delegatus non potest delegare*⁶. However, the modern view is that the relevant question is simply one of construction of the power⁷. If the power is wide enough to permit resettlement, then the trustees clearly do have the necessary authority to let the money pass out of the settlement and no question of unlawful delegation arises. If the power is not wide enough to permit resettlement, then that is the end of the matter.

1 *Roper-Curzon v Roper-Curzon* (1871) LR 11 Eq 452; *Re Halsted's Will Trusts, Halsted v Halsted* [1937] 2 All ER 570; *Re Ropner's Settlement Trusts, Ropner v Ropner* [1956] 3 All ER 332n, [1956] 1 WLR 902; *Re Wills' Will Trusts, Wills v Wills* [1959] Ch 1, [1958] 2 All ER 472. As to express powers of advancement see PARA 667 post.

2 *Re Ropner's Settlement Trusts, Ropner v Ropner* [1956] 3 All ER 332n, [1956] 1 WLR 902. As to the statutory power of advancement see the Trustee Act 1925 s 32 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 76); and PARA 667 post. The perpetuity period applicable to the resettlement is reckoned from the date of the original settlement: see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1062.

3 *Re Wills' Will Trusts, Wills v Wills* [1959] Ch 1, [1958] 2 All ER 472.

4 *Pilkington v IRC* [1964] AC 612, [1962] 3 All ER 622, HL.

5 *Re May's Settlement, Public Trustee v Meredith* [1926] Ch 136; *Re Mewburn's Settlement, Perks v Wood* [1934] Ch 112; *Re Morris' Settlement Trusts, Adams v Napier* [1951] 2 All ER 528, CA.

6 It is the principle that delegated powers cannot be further delegated. See *Re Boulton's Settlement Trusts, Stewart v Boulton* [1928] Ch 703; *Re Morris' Settlement Trusts, Adams v Napier* [1951] 2 All ER 528, CA; *Re Hunter's Will Trusts, Gilks v Harris* [1963] Ch 372, [1962] 3 All ER 1050. See also *Re Hay's Settlement Trusts* [1981] 3 All ER 786, [1982] 1 WLR 202; cf *Re Wills' Will Trusts, Wills v Wills* [1959] Ch 1, [1958] 2 All ER 472. See further POWERS.

7 See *Pilkington v IRC* [1964] AC 612 at 639, [1962] 3 All ER 622 at 630, HL, per Viscount Radcliffe.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(3) CONTRACTS FOR SETTLEMENTS/(i) Contracts in general/627. Contracts in general.

(3) CONTRACTS FOR SETTLEMENTS

(i) Contracts in general

627. Contracts in general.

The great majority of contracts for settlements are made in contemplation of marriage¹, but such contracts may be made on other occasions². Such contracts are now required to be in writing or evidenced by writing³.

1 Such contracts are usually called 'marriage articles': see PARA 628 et seq post.

2 The most relevant modern example is that of an interim trust deed in an occupational pension scheme which is executed pending the execution of the definitive trust deed and rules: see eg *In re Imperial Foods Ltd Pension Scheme*[1986] 2 All ER 802, [1986] 1 WLR 717. Another example is a contract to make a gift by will: see WILLS vol 50 (2005 Reissue) PARA 318 et seq.

3 See the Statute of Frauds (1677) s 4 (as amended); and CONTRACT vol 9(1) (Reissue) PARA 623. Contracts to settle land are within the provisions of the Law of Property (Miscellaneous Provisions) Act 1989 s 2: see CONTRACT vol 9(1) (Reissue) PARA 624; SALE OF LAND vol 42 (Reissue) PARA 29. As to contracts to settle land see PARAS 642-643 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(3) CONTRACTS FOR SETTLEMENTS/(ii) Contracts to settle Property on Marriage/A. MARRIAGE ARTICLES/628. Definitions.

(ii) Contracts to settle Property on Marriage

A. MARRIAGE ARTICLES

628. Definitions.

Articles are clauses of a document, and hence the word 'articles' sometimes means the document itself. 'Marriage articles' commonly means a contract in consideration of marriage to settle property on terms intended to be embodied subsequently in a formal marriage settlement¹.

1 See PARA 629 et seq post.

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629. Mode of carrying marriage articles into effect.

The trusts created by marriage articles are, in most instances, in the nature of executory trusts¹. A court of equity, therefore, directs a settlement in accordance with the intention of the parties rather than the technical meaning attached to the words used², and, if necessary, inserts words in order to give effect to such intention³. However, the legal construction of an executed settlement is not affected by proof that the settlement is not such as the court would have directed in accordance with the articles⁴, but the court may rectify a settlement to give effect to marriage articles⁵.

1 As to executory interests see REAL PROPERTY vol 39(2) (Reissue) PARA 173 et seq. Articles may so finally declare the intention of the parties that no future instrument is required to carry it out, the trusts being perfect on the articles as they stand (*De Havilland v De Saumarez*, *De Havilland v Bingham* (1865) 14 WR 118; cf *Johnstone v Mappin* (1891) 60 LJ Ch 241), but as a rule they are treated by the court as short notes to be developed afterwards at length according to the usual course of settlements (*Marchioness of Blandford v Dowager Duchess of Marlborough* (1743) 2 Atk 542 at 545; *Taggart v Taggart* (1803) 1 Sch & Lef 84; *Bushell v Bushell* (1803) 1 Sch & Lef 90; and see *Randall v Willis* (1800) 5 Ves 262 at 275; *Fegan v Meegan* [1900] 2 IR 441).

2 *Webb v Kelly* (1825) 3 LJOS Ch 172; *Sackville-West v Viscount Holmesdale* (1870) LR 4 HL 543. This latter case was one of a will, but there is no distinction between an executory trust in marriage articles and in a will except that the object and purpose of the former furnish an indication of intention which in the latter must appear in some manner on the face of the instrument: *Sackville-West v Viscount Holmesdale* supra at 554; *Blackburn v Stables* (1814) 2 Ves & B 367. As to executory trusts see TRUSTS vol 48 (2007 Reissue) PARAS 669-671.

3 *Kentish v Newman* (1713) 1 P Wms 234; *Targus v Puget* (1750) 2 Ves Sen 194.

4 *Doe d Daniell v Woodroffe* (1842) 10 M & W 608; affd (1849) 2 HL Cas 811. As to the construction of written instruments see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 164 et seq.

5 *Cogan v Duffield* (1876) 2 ChD 44, CA. The proper remedy in such a case is the rectification of the settlement: see *Roberts v Kingsly* (1749) 1 Ves Sen 238; and MISTAKE vol 77 (2010) PARA 57 et seq. The court does not alter an agreement: *Earl of Warrington v Langham* (1699) Prec Ch 89.

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630. Covenants to settle by deed or will.

A covenant to make a settlement either by deed or will is satisfied if the provisions are carried out by will¹. If the covenant is to make provision for children or grandchildren by deed or will, the covenantor is not bound to make provision for children who die in his lifetime².

If a covenantor who has covenanted to settle property fails to fulfil his covenant, the remedies of the covenantee at the covenantor's death are either against any property specifically made subject to the covenant and of which the covenantor has not disposed in his lifetime³, or are in damages against his estate⁴. A covenant to leave a specific sum by will constitutes a debt against the covenantor's estate⁵. Contracts to make wills are discussed elsewhere⁶.

The wife's claim under a covenant by her husband in marriage articles to leave her, by deed or will, a sum of money at his death if she should survive him is satisfied either in whole or part, on his death intestate, out of her interest in his estate under his intestacy⁷. However, if he is bound to carry out the covenant in his lifetime, then on his death intestate, without making the agreed provision, there is a clear breach of the covenant and she is entitled to the agreed sum in addition to her interest under his intestacy⁸. The same applies if the covenant is to leave the wife an annuity; her rights under his intestacy are not a performance of the covenant either wholly or partly⁹.

1 See *Jones v How* (1850) 7 Hare 267; *Re Brookman's Trust* (1869) 5 Ch App 182. As to the doctrine of satisfaction see EQUITY vol 16(2) (Reissue) PARA 739 et seq. For a case invoking a question of this doctrine in relation to marriage articles see *Lady Thynne v Earl of Glengall* (1848) 2 HL Cas 131. As to the satisfaction of debts by legacies see EQUITY vol 16(2) (Reissue) PARA 751.

2 See WILLS vol 50 (2005 Reissue) PARA 320. See also *Needham v Smith* (1828) 4 Russ 318.

3 See LIEN vol 68 (2008) PARAS 878-879. Where the covenant was to leave specified property of the covenantor by will, then, in the absence of notice (now to be given, in the case of unregistered land, by registration under the Land Charges Act 1972 (see PARA 643 post)), the remedy against the property lies only against volunteers (see *Synge v Synge* [1894] 1 QB 466, CA) and, it seems, only if the covenant was for good consideration (see LIEN vol 68 (2008) PARA 878). As to the protection of rights affecting registered land see LAND REGISTRATION vol 26 (2004 Reissue) PARA 992 et seq.

4 See *Synge v Synge* [1894] 1 QB 466, CA; and WILLS vol 50 (2005 Reissue) PARA 319. If, where the covenant was to leave specific property by will, the covenantor disposed of it in his lifetime in a manner contrary to the covenant, an action for breach of contract would arise on the disposition: *Synge v Synge* supra at 471.

5 See *Eyre v Monro* (1857) 3 K & J 305; and WILLS vol 50 (2005 Reissue) PARA 319. As to the payment of debts in the administration of estates see EXECUTORS AND ADMINISTRATORS.

6 See WILLS vol 50 (2005 Reissue) PARAS 318-319.

7 As to the doctrine of performance see EQUITY vol 16(2) (Reissue) PARA 754 et seq. See also *Blandy v Widmore* (1715) 1 P Wms 324; *Lee v D'Aranda* (1747) 1 Ves Sen 1; *Garthshore v Chalie* (1804) 10 Ves 1; *Goldsmid v Goldsmid* (1818) 1 Swan 211. Cf *Thacker v Key* (1869) LR 8 Eq 408. As to a widow's share on her husband's intestacy see EXECUTORS AND ADMINISTRATORS.

8 *Oliver v Brickland* (1732) cited in 3 Atk at 420, 422; *Wright v Fearriss* (1791) 3 Swan 681; *Lang v Lang* (1837) 8 Sim 451.

9 *Couch v Stratton* (1799) 4 Ves 391; *Salisbury v Salisbury* (1848) 6 Hare 526; *James v Castle* (1875) 33 LT 665. See also *Creagh v Creagh* (1845) 8 I Eq R 68, where the covenant was to provide a jointure; and *Young v Young* (1871) IR 5 Eq 615. As to jointure see PARA 725 post.

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631. Articles for settlement of land.

Before the commencement of the Trusts of Land and Appointment of Trustees Act 1996, marriage articles relating to land were directed to be carried out as strict settlements¹. By virtue of that Act, it is no longer possible to create new strict settlements of land². A marriage settlement of land, other than one created before that Act came into force³, must therefore take effect behind a trust of land within the meaning of the Act⁴.

Before the commencement of the Trusts of Land and Appointment of Trustees Act 1996, limitations in marriage articles in favour of the issue of the bodies of the husband and wife or of the issue of the marriage were carried out by directing a strict settlement giving fees tail to the sons, with remainders in tail to the daughters⁵. However, the Act has abolished entailed interests so that where a person purports by an instrument coming into operation after the commencement of the Act to grant to another person an entailed interest, the instrument is not effective to grant an entailed interest, but operates instead as a declaration that the property is held on trust absolutely for the person to whom an entailed interest in the property was purportedly granted⁶.

If the issue are directed by the articles to take absolute interests, the children of the marriage take as tenants in common and not as joint tenants⁷, and the usual directions for vesting at majority or on marriage and survivorship and accrue clauses are inserted in the settlement⁸.

No portion of any provision made by executory articles for a class merges in the residue by reason of the death of members of the class while any one member of the class remains, and that one member takes the whole provision made for the class⁹.

1 Before 1926, the courts would direct marriage articles to be carried out by the creation of strict settlements rather than by fee simple or fee tail, notwithstanding the terms of the marriage articles, on the basis that it was contrary to the fundamental nature of marriage articles that the settlement could be immediately destroyed by the settlor: see eg *Rossiter v Rossiter* (1863) 14 I Ch R 247. It was otherwise in the case of fee tails, where the fee tail could not be barred by the first taker alone, in which case the settlement followed the words of the articles: see *Howel v Howel* (1751) 2 Ves Sen 358; *Highway v Banner* (1785) 1 Bro CC 584.

2 See the Trusts of Land and Appointment of Trustees Act 1996 s 2; and PARA 676 post.

3 Ie 1 January 1997: see the Trusts of Land and Appointment of Trustees Act 1996 (Commencement) Order 1996, SI 1996/2974; and PARA 676 post.

4 See the Trusts of Land and Appointment of Trustees Act 1996 ss 1, 2; and PARAS 609 ante, 676 post.

5 *West v Errissey* (1726) 2 P Wms 349, HL; *Villiers v Villiers* (1740) Atk 71; *Hart v Middlehurst* (1746) 3 Atk 371; *Bash v Dalway* (1747) 3 Atk 530; *Dod v Dod* (1755) Amb 274; *Hamilton v Cathcart* (1777) Wallis by Lyne 282; *Phillips v James* (1865) 3 De GJ & Sm 72; *Grier v Grier* (1872) LR 5 HL 688. Cf *Lord Glenorchy v Bosville* (1733) Cas temp Talb 3; and see *Randall v Daniel* (1857) 24 Beav 193. For cases where the daughters have been excluded see *Powell v Price* (1729) 2 P Wms 535; *M'guire v Scully* (1829) Beat 370. 'Issue male' of a marriage has been held not to include the son of a daughter: *Lambert v Peyton* (1860) 8 HL Cas 1. 'Male issue' has been similarly construed, but not 'male descendants': *Re du Cros' Settlement, du Cros Family Trustee Co Ltd v du Cros* [1961] 3 All ER 193; [1961] 1 WLR 1252. As to entailed interests see PARA 715 et seq post; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

6 See the Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1 para 5; and PARA 677 post.

7 As to tenancies in common and joint tenancies see REAL PROPERTY vol 39(2) (Reissue) PARA 189 et seq.

8 *Roche v Roche* (1845) 2 Jo & Lat 561; *Re Martin's Trusts* (1857) 6 I Ch R 211; *Cronin v Roche* (1858) 8 I Ch R 103; *Herring-Cooper v Herring-Cooper* [1905] 1 IR 465. Cf *Re Parrott, Walter v Parrott* (1886) 33 ChD 274, CA; *Wright v Wright* [1904] 1 IR 360 (both cases on wills); but see *Hynes v Redington* (1844) 1 Jo & Lat 589. As to the age of majority see PARA 605 note 1 ante. As to the directions for vesting see PARA 634 post.

9 *Hynes v Redington* (1834) L & G temp Plunk 33. See further WILLS vol 50 (2005 Reissue) PARA 471 et seq.

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632. Articles for settlement of personality.

Principles similar to those relating to the settlement of land prevail where the articles are for the settlement of personality¹. So far as the articles expressly provide for the destination of the capital or income the court must follow them, but in construing them it has regard to what is recognised as the usual form of settlement². In accordance with this principle, a life interest has been given to the wife in personality where articles stipulated that it should be settled on her, even though there was a subsequent provision that the income should in all cases belong to the husband³. A direction in a deed that a fund should be settled upon a woman and her issue has been carried out by settling the property on her for life, and after her death for her issue as she should by deed or will appoint, with trusts for her issue *per stirpes* in default of appointment, and in default of issue as she should by will appoint, and in default of such appointment to her personal representatives⁴.

1 As to the principles relating to the settlement of land see PARA 631 ante.

2 As to the usual trusts in a settlement of personality see PARA 915 et seq post. As to the manner in which directions in a will to settle personality by reference to the limitations of realty have been carried out see *Shelley v Shelley* (1868) LR 6 Eq 540; *Sackville-West v Viscount Holmesdale* (1870) LR 4 HL 543; *Re Beresford-Hope, Aldenham v Beresford-Hope* [1917] 1 Ch 287; *Re Steele's Will Trusts, National Provincial Bank Ltd v Steele* [1948] Ch 603, [1948] 2 All ER 193. As to the manner of settling personality to devolve with realty see PARAS 937-943 post.

3 *Byam v Byam* (1854) 19 Beav 58.

4 *Stanley v Jackman* (1857) 23 Beav 450. Cf *Stonor v Curwen* (1832) 5 Sim 264; *Combe v Hughes* (1872) LR 14 Eq 415 (both cases on wills). In *Samuel v Samuel* (1845) 14 LJ Ch 222, which was also a case on a will, the mother took the property absolutely. Where articles provided that the wife, in the event (which happened) of her surviving her husband, should settle and hand over two-thirds of any property remaining at the time to her children, she was held in her own right entitled to one-third of the property of which her husband died possessed: *M'Donnell v M'Donnell* (1843) 2 Con & Law 481. If the husband had survived, his obligation to settle two-thirds of his property would have been satisfied by a disposition by will: *M'Donnell v M'Donnell* supra. See also *Hankes v Jones* (1756) 5 Bro Parl Cas 136, HL. As to trusts for issue *per stirpes* in default of appointment see WILLS vol 50 (2005 Reissue) PARA 680 et seq.

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633. Provision for husband or wife.

A direction in a will that, on the marriage of the testator's daughter, certain property should be settled for her and her issue may authorise the insertion in a settlement made on the daughter's marriage of a power to appoint a life interest to her husband¹. Provision for an annuity by way of jointure to a widow may be authorised by a direction contained in a will that, in the event of a son marrying, his property should be put into strict settlement². A husband has been entirely excluded from the trusts in default of appointment contained in a settlement made under a direction in a will that the shares of the testator's daughters should be settled on them strictly³.

1 *Charlton v Rendall* (1853) 11 Hare 296. As to life interests see PARA 716 post.

2 *Wright v Wright* [1904] 1 IR 360. As to annuities see PARA 726 post.

3 *Loch v Bagley* (1867) LR 4 Eq 122. Note that it is no longer possible to create strict settlements of land: see PARA 676 post.

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634. Usual powers and provisions authorised.

A clause in marriage articles that the settlement is to contain all usual powers and provisions has been held to authorise the insertion of powers for the management and better enjoyment of the settled estates which are beneficial to all parties¹, such as powers of sale and exchange and reinvestment², leasing³, cutting timber in due course of management⁴, changing securities⁵ and appointing new trustees⁶. Powers of maintenance, education and advancement have also been ordered to be inserted⁷. On the other hand, powers of jointuring and charging portions in favour of younger children are not inserted⁸, unless expressly provided for by the articles⁹, and a covenant to settle after-acquired property is not a usual clause¹⁰.

A reference to specific powers has been held to exclude others¹¹. A power of appointment among the children of the intended marriage should be inserted¹² unless the executory articles contain directions for equal division among children¹³.

1 *Hill v Hill* (1834) 6 Sim 136 at 145. As to what are 'usual' powers see POWERS. Having regard to the wide range of the powers conferred by the Settled Land Act 1925 (see PARA 795 et seq post) and by the Trusts of Land and Appointment of Trustees Act 1996 (see PARA 902 et seq post), it will be unnecessary in future in a normal case to insert any specific powers of that nature. It may in some cases be desired to vary the statutory powers, but it is submitted that powers more extensive than the statutory powers would not be 'usual'. As to restrictions on the statutory powers see PARA 782 post; and as to the conferment of additional or larger powers see PARA 880 post.

2 *Peake v Penlington* (1813) 2 Ves & B 311; *Hill v Hill* (1834) 6 Sim 136. Cf *Wise v Piper* (1880) 13 ChD 848, distinguishing *Wheate v Hall* (1809) 17 Ves 80. A power of sale may be authorised by implication: see *Elton v Elton (No 2)* (1860) 27 Beav 634; and POWERS.

3 This includes powers of granting building or mining leases: *Hill v Hill* (1834) 6 Sim 136; *Scott v Steward* (1859) 27 Beav 367. See also *Duke of Bedford v Marquess of Abercorn* (1836) 1 My & Cr 312; and POWERS. Cf *Turner v Sargent* (1853) 17 Beav 515. However, the provisions of the articles must be followed strictly: *Pearse v Baron* (1821) Jac 158; cf *Brasier v Hudson* (1837) 9 Sim 1 at 11.

4 *Davenport v Davenport* (1863) 1 Hem & M 775.

5 *Sampayo v Gould* (1842) 12 Sim 426.

6 *Sampayo v Gould* (1842) 12 Sim 426. See also *Brasier v Hudson* (1837) 9 Sim 1; *Lindow v Fleetwood* (1835) 6 Sim 152.

7 *Turner v Sargent* (1853) 17 Beav 515; *Re Parrott, Walter v Parrott* (1886) 33 ChD 274, CA. See also *Spirett v Willows* (1869) 4 Ch App 407. The statutory powers of maintenance and advancement (see PARA 667 post) will in most cases be sufficient.

8 Neither power is a usual power within the meaning of an agreement to make a settlement with all the usual powers: see POWERS. As to jointure see PARA 725 post.

9 *Duke of Bedford v Marquess of Abercorn* (1836) 1 My & Cr 312; *Grier v Grier* (1872) LR 5 HL 688. See also *Higginson v Barneby* (1826) 2 Sim & St 516; *Wright v Wright* [1904] 1 IR 360; and note 8 supra. Where the articles were for a strict settlement, to contain a power to the father to charge £1,000 for younger children, it was said that it might well be contended that the court would insert a clause to charge the estate with £1,000 with power only to the father to apportion the shares: *Savage v Carroll* (1810) 1 Ball & B 265 at 276. However, this dictum was doubted in *Re Whitcroft's Estate* [1934] IR 649. In *Re Gowan, Gowan v Gowan* (1880) 17 ChD 778 (a case on a will) a hotchpot clause was ordered to be inserted, but in *Lees v Lees* (1871) IR 5 Eq 549 the court declined to insert such a clause. As to hotchpot clauses see PARA 924 post.

10 *Re Maddy's Estate, Maddy v Maddy* [1901] 2 Ch 820. As to after-acquired property see PARA 644 et seq post.

11 *Brewster v Angell* (1820) 1 Jac & W 625; *Pearse v Baron* (1821) Jac 158.

12 *Thompson v Simpson* (1841) 1 Dr & War 459. See also *Young v Macintosh* (1843) 13 Sim 445; *Oliver v Oliver* (1878) 10 ChD 765; *Re Gowan, Gowan v Gowan* (1880) 17 ChD 778.

13 *Re Parrott, Walter v Parrott* (1886) 33 ChD 274, CA. A power of appointment given by articles to a husband has been held not to be indefinite, but confined to the issue of the marriage, the intention being to secure a provision for the intended wife and such issue: *Bristow v Warde* (1794) 2 Ves 336. However, this case cannot be taken to establish a general rule: see *Mackinley v Sison* (1837) 8 Sim 561 at 567; *Peover v Hassel* (1861) 1 John & H 341 at 346; *Minton v Kirwood* (1868) 3 Ch App 614 at 618.

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635. Satisfaction of covenant to pay money.

If a covenant is to pay to the wife a certain sum after the husband's death, and the husband by his will leaves her an equal or greater sum, the court, with some reluctance, has adhered to the rule¹ that, where there is a debt due from the testator to a person, and the legacy given to that person is as much as or more than the debt, then the legacy is a satisfaction of the debt². However, each case turns largely on the construction of the particular covenant and will, and the court has allowed the wife to take both the provision made for her by the articles and that made by the will on grounds of difference of value between the two provisions³, or where the will has contained a direction to pay the testator's debts⁴.

1 As to the doctrine of satisfaction generally see EQUITY vol 16(2) (Reissue) PARA 739 et seq.

2 See *Atkinson v Littlewood* (1874) LR 18 Eq 595; and EQUITY vol 16(2) (Reissue) PARA 751. See also *Lady Herne v Herne* (1706) 2 Vern 555 (where a wife was put to election to waive the marriage articles or the will); *Corus v Farmer* (1707) 2 Eq Cas Abr 34; *Bridges v Bere* (1708) 2 Eq Cas Abr 34; *Lord Mountague v Maxwell* (1716) 4 Bro Parl Cas 598. When a husband covenanted that his executors would in each year during her life make up the wife's income to a stated sum, the covenant was held to have been performed by a direction to pay the income of his residuary estate to her for life: *Re Hall, Hope v Hall* [1918] 1 Ch 562.

3 *Jobson v Pelly* (1744) 9 Mod Rep 437; *Haynes v Mico* (1781) 1 Bro CC 129 (where the covenant was to pay a sum within one month after the husband's death, and the legacy was payable six months afterwards); *Devese v Pontet* (1785) 1 Cox Eq Cas 188 (where a share of residue was held not to be a satisfaction); *Kirkman v Kirkman* (1786) 2 Bro CC 95; *Rhodes v Rhodes* (1790) 1 Ves 96.

4 *Cole v Willard* (1858) 25 Beav 568, dissenting from *Wathen v Smith* (1819) 4 Madd 325, where Leach V-C considered that a testator must not be understood to include under the word 'debt' his liability on bond or covenant made before his marriage, even though it would be discharged after his death. As to the effect of a direction in the covenantor's will to pay his debts see *Re Hall, Hope v Hall* [1918] 1 Ch 562 (see note 2 supra); *Re Manners, Public Trustee v Manners* [1949] Ch 613, [1949] 2 All ER 201.

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636. Variation of articles or settlement.

The contracting parties to a marriage may, if they please, vary marriage articles by other articles before marriage¹. Also, although a court of equity does not allow the parties to revoke before the marriage an executed settlement simply because they wish to insert provisions different from those which they desired at the time the settlement was executed², if the marriage contract is put an end to so that, even if a marriage subsequently took place between the parties it would, strictly speaking, be not the same marriage but another marriage than the one intended, the court has declared an executed settlement not to be binding³.

1 *Legg v Goldwire* (1736) Cas temp Talb 20; *Cook v Fryer* (1842) 1 Hare 498; *Re Gundry, Mills v Mills* [1898] 2 Ch 504 at 509. It was, however, doubted whether the principle applies to a covenant to settle after-acquired property: *Re Gundry, Mills v Mills* supra at 509. As to rectification where a settlement, whether ante-nuptial or post-nuptial, differs from articles entered into before marriage see MISTAKE vol 77 (2010) PARA 63. As to after-acquired property see PARA 644 et seq post.

2 *Page v Horne* (1848) 11 Beav 227; *Bond v Walford* (1886) 32 ChD 238 at 242. See also *Re Gundry, Mills v Mills* [1898] 2 Ch 504; and cf *Goodwin v Goodwin* (1658) 1 Rep Ch 173; *Chadwick v Doleman* (1705) 2 Vern 528 at 529.

3 *Robinson v Dickenson* (1828) 3 Russ 399; *Thomas v Brennan* (1846) 15 Lj Ch 420; *Bond v Walford* (1886) 32 ChD 238. However, where, in contemplation of a marriage that did not take place, a spinster vested property in trustees upon trust for herself until her marriage, if any, the settlement was held to be irrevocable: *M'Donnell v Hesilrige* (1852) 16 Beav 346. As to the variation of settlements after a decree of divorce, nullity or judicial separation see PARA 603 note 1 ante; and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 510 et seq.

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B. INFORMAL CONTRACTS TO SETTLE PROPERTY ON MARRIAGE

637. Requisites for enforceable contracts.

An offer to make a settlement in the event of a marriage taking place may, by a marriage following on the offer, become a contract binding on all parties concerned¹. No formal document is required to enable such a contract to be enforced², but it must comply with the following conditions:

- 1 (1) any agreement to settle land must satisfy the requirements of the Law of Property (Miscellaneous Provisions) Act 1989³;
- 2 (2) there must be a definite offer which is turned into a contract by the celebration of the marriage⁴; a mere representation of intention to do something in the future does not suffice⁵;
- 3 (3) there must be at least reasonable certainty as to the amount and nature of the property to which the contract applies⁶, although parol evidence may be admissible to explain ambiguities⁷; and
- 4 (4) it must be proved that the marriage took place on the faith of the offer⁸; so it necessarily follows that the offer must be communicated to the person seeking to enforce it⁹.

A contract so created may be enforced, if a marriage takes place on the faith of the offer, whether the offer has been made by one of the parties to the marriage to the other¹⁰ or made by a third person to either of them¹¹.

1 *Hammersley v Baron De Biel* (1845) 12 Cl & Fin 45, HL; *Maunsell v White* (1854) 4 HL Cas 1039.

2 *Baron De Biel v Thomson* (1841) 3 Beav 469. A contract for a settlement could be made out by a correspondence: *Moore v Hart* (1683) 1 Vern 110; *Douglas v Vincent* (1690) 2 Vern 202; *Wankford v Fotherley* (1694) 2 Vern 322 (affd (1695) 15 Lords Journals 531, HL); *Herbert v Earl of Winchelsea* (1714) 1 Bro Parl Cas 145; *Seagood v Meale and Leonard* (1721) Prec Ch 560; *Saunders v Cramer* (1842) 3 Dr & War 87; *Luders v Anstey* (1799) 4 Ves 501; *Montgomery v Reilly* (1827) 1 Bli NS 364, HL; *Laver v Fielder* (1862) 32 Beav 1; *Coverdale v Eastwood* (1872) LR 15 Eq 121; *Keays v Gilmore* (1874) IR 8 Eq 290; *Viret v Viret* (1880) 50 LJ Ch 69.

3 See the Law of Property (Miscellaneous Provisions) Act 1989 s 2; and PARAS 642-643 post. See also SALE OF LAND vol 42 (Reissue) PARA 29 et seq.

4 Expressions such as 'her share' (*Laver v Fielder* (1862) 32 Beav 1) and 'a child's share' (*Keays v Gilmore* (1874) IR 8 Eq 290) have been held to be sufficiently precise to amount to definite offers. See also *Luders v Anstey* (1799) 4 Ves 501; *Saunders v Cramer* (1842) 3 Dr & War 87; *Hammersley v Baron De Biel* (1845) 12 Cl & Fin 45, HL; *Shadwell v Shadwell* (1860) 9 CBNS 159; *Alt v Alt* (1862) 4 Giff 84; *Walford v Gray* (1865) 11 Jur NS 106 at 473; *Coverdale v Eastwood* (1872) LR 15 Eq 121; *Synge v Synge* [1894] 1 QB 466, CA; *Skeete v Silberberg* (1895) 11 TLR 491; *Re Broadwood, Edwards v Broadwood (No 2)* (1912) 56 Sol Jo 703, CA; *Re Lindrea, Lindrea v Fletcher* (1913) 109 LT 623.

5 *Moorhouse v Colvin* (1851) 15 Beav 341; *Maunsell v White* (1854) 4 HL Cas 1039; *Re Fickus, Farina v Fickus* [1900] 1 Ch 331. See also *Randall v Morgan* (1805) 12 Ves 67; *Madox v Nowlan* (1824) Beat 632; *Quinlan v Quinlan* (1834) Hayes & Jo 785; *Jorden v Money* (1854) 5 HL Cas 185; *Beaumont v Carter, Carter v Beaumont* (1863) 32 Beav 586; *M'Askie v M'Cay* (1868) IR 2 Eq 447; *Re Allen, Hincks v Allen* (1880) 49 LJ Ch 553; *Vincent v Vincent* (1887) 56 LT 243, CA.

6 *Prole v Soady* (1859) 2 Giff 1 at 22; *Kay v Crook* (1857) 3 Sm & G 407. See also *Moorhouse v Colvin* (1852) 21 LJ Ch 782; *M'Askie v M'Cay*(1868) IR 2 Eq 447; *Re Allen, Hincks v Allen* (1880) 49 LJ Ch 553.

7 *Laver v Fielder* (1862) 32 Beav 1. See further DEEDS AND OTHER INSTRUMENTS.

8 *Jameson v Stein* (1855) 21 Beav 5; *Goldicutt v Townsend* (1860) 28 Beav 445; *Dashwood v Jermyn*(1879) 12 ChD 776. See also *De Manneville v Crompton* (1813) 1 Ves & B 354. The court may infer that the marriage took place on the faith of the offer from the fact of its taking place immediately after the offer: *Luders v Anstey* (1799) 4 Ves 501; *Alt v Alt* (1862) 4 Giff 84; *Viret v Viret* (1880) 50 LJ Ch 69.

9 *Ayliffe v Tracy* (1722) 2 P Wms 65.

10 *Alt v Alt* (1862) 4 Giff 84; *Viret v Viret* (1880) 50 LJ Ch 69.

11 *Wankford v Fotherley* (1694) 2 Vern 322; *Ramsden v Oldfield and Appleyard* (1720) 4 Vin Abr 453, pl 5; *Hammersley v Baron De Biel* (1845) 12 Cl & Fin 45, HL; *Shadwell v Shadwell* (1860) 9 CBNS 159; *Laver v Fielder* (1862) 32 Beav 1; *Coverdale v Eastwood*(1872) LR 15 Eq 121. As to the parties between whom a contract may be enforced see PARA 640 post.

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638. Effect of completed settlement.

There is a presumption, which may, however, be rebutted by sufficient evidence¹, that a completed settlement contains the entire marriage contract, and, unless it is rebutted, representations or promises made by correspondence prior to the settlement which are not carried out by it are not enforced².

1 *Hammersley v Baron De Biel* (1845) 12 Cl & Fin 45, HL; *Loxley v Heath* (1860) 1 De GF & J 489 at 493.

2 *Loxley v Heath* (1860) 1 De GF & J 489; *Sands v Soden* (1862) 31 LJ Ch 870; *Re Badcock, Kingdon v Tagert* (1880) 17 ChD 361. Cf *White v Anderson* (1850) 1 I Ch R 419. As to the rectification of marriage settlements see MISTAKE vol 77 (2010) PARA 63.

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C. ENFORCEMENT OF CONTRACTS TO SETTLE PROPERTY ON MARRIAGE

639. Where specific performance decreed.

The court will decree specific performance of a contract for which marriage was the consideration after the marriage has taken place¹. It is no answer to an action to enforce articles that a third person has failed to perform his portion of the contract², or even that the person seeking to enforce them has himself failed to perform his part under them³; but, if there is anything for him to do in which third persons are interested, the court takes care that he obtains no benefit until he has performed his part of the agreement⁴.

Specific performance of marriage articles, as of other contracts, may be refused on the ground of ambiguity and uncertainty⁵ or by reason of the agreement being dependent on a contingency which has not happened⁶, or the right to it may be lost by conduct amounting to laches⁷.

The courts of equity have always supported marriage articles, and have ordered specific performance of them in preference to leaving the parties interested to sue for the recovery of damages⁸. Where the only instrument was a bond given to secure an agreement to settle property on marriage, the bond was considered as articles of agreement for a settlement, and it was held that the obligor could not elect to pay the penalty, but must specifically perform his contract⁹.

1 *Haymer v Haymer* (1678) 2 Vent 343. As to the enforcement of contracts to settle land see PARAS 642-643 post. As to specific performance generally see SPECIFIC PERFORMANCE.

2 *Perkins v Thornton* (1741) Amb 502; *Lloyd v Lloyd* (1837) 2 My & Cr 192. Cf *North v Ansell* (1731) 2 P Wms 618. *Meredeth v Jones* (1687) 1 Vern 463 cannot be considered law.

3 *Wallace v Wallace* (1842) 2 Dr & War 452; *Jeston v Key*(1871) 6 Ch App 610. Cf *Woodcock v Monckton* (1844) 1 Coll 273, where a covenantor was held discharged from his covenant in a marriage settlement executed by him by reason of the failure of another to execute the settlement. See also *Baskerville v Gore* (1701) Prec Ch 186; affd (1703) 2 Vern 448.

4 *Jeston v Key*(1871) 6 Ch App 610; *Re Smith's Trusts* (1890) 25 LR Ir 439. See also *Corsbie v Free* (1840) Cr & Ph 64; and cf *Crofton v Ormsby* (1806) 2 Sch & Lef 583 at 602.

5 *Franks v Martin* (1760) 1 Eden 309; affd 5 Bro Parl Cas 151, HL. See also *Bromley v Jefferies* (1700) 2 Vern 415; and SPECIFIC PERFORMANCE vol 44(1) (Reissue) PARA 844 et seq.

6 *Whitmel v Farrel* (1749) 1 Ves Sen 256.

7 *Howorth v Deem* (1758) 1 Eden 351. See, however, *Slaney v Slaney* (1714) 5 Bro Parl Cas 113. As to laches generally see EQUITY vol 16(2) (Reissue) PARA 910 et seq.

8 *Cannel v Buckle* (1724) 2 P Wms 243; *Vernon v Vernon* (1731) 2 P Wms 594 (affd 1 Bro Parl Cas 267); *Vereker v Lord Gort* (1838) 1 I Eq R 1. See also *Roper v Bartholomew*, *Butler v Bartholomew* (1823) 12 Price 797.

9 *Hopson v Trevor* (1723) 1 Stra 533; *Chilliner v Chilliner* (1754) 2 Ves Sen 528; *Logan v Wienholt* (1833) 7 Bli NS 149, HL.

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640. Parties between whom a contract is enforceable.

Specific performance may be ordered against a contracting party either in his lifetime¹, or after his death against his estate². It may be ordered at the suit of a party to the contract or his personal representative³, at the suit of the issue of the marriage⁴ or even at that of the personal representative of a party intended to be benefited⁵.

1 *Sidney v Sidney* (1734) 3 P Wms 269.

2 *Haymer v Haymer* (1678) 2 Vent 343; *Laver v Fielder* (1862) 32 Beav 1; *Jeston v Key* (1871) 6 Ch App 610; *Coverdale v Eastwood* (1872) LR 15 Eq 121. See also *Williams v Williams* (1868) 37 LJ Ch 854; *Keays v Gilmore* (1874) IR 8 Eq 290.

3 *Beswick v Beswick* [1968] AC 58, [1967] 2 All ER 1197, HL.

4 *Trevor v Trevor* (1719) 1 P Wms 622, HL. However see also *Cann v Cann* (1687) 1 Vern 480, where specific performance was refused in a suit by a grandson whose father would have been tenant in tail and could have disentailed. As to entailed interests see PARA 715 et seq post; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq. As to the persons coming within the marriage consideration see PARAS 661-662 post.

5 *Wankford v Fotherley* (1694) 2 Vern 322 (affd (1695) 15 Lords Journals 531, HL); *Lovett v Lovett* (1859) John 118. Cf *Loxley v Heath* (1860) 27 Beav 523 (affd 1 De GF & J 489); *Dennehy v Delaney* (1876) IR 10 Eq 377. A wife's elopement has been held to be no bar to her claim to specific performance: *Sidney v Sidney* (1734) 3 P Wms 269. See also *Blount v Winter, Winter v Blount* (1781) 3 P Wms 276n. As to the court's power to vary a marriage settlement see PARA 603 note 1 ante.

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641. Effect of covenant to settle or charge specified property.

A covenant to settle or charge specified land or other specified property of the covenantor creates in favour of the covenantee a lien on that land or property binding on all persons to whom it might come except purchasers for value without notice¹. A covenant to purchase and settle land of a certain value has been enforced against the representatives of the covenantor who died without purchasing the land, by directing the investment in land of a sum equivalent to what would have been the then actual value of the land if a purchase pursuant to the covenant had been made². If the settlement contains something equivalent to a warranty by the settlor that the settled property is of a certain value, he is liable to make good any deficiency³, but in each case it is a question of the construction of the particular instrument⁴.

1 See LIEN vol 68 (2008) PARA 878. As to the enforcement of contracts to settle land see also PARAS 642-643 post.

2 *Dowager Lady Suffield v Lord Suffield* (1812) 3 Mer App 699. For a case where in very special circumstances specific performance had become impossible see *Barker v Ivers* (1724) 5 Bro Parl Cas 127, HL.

3 *Taylor v Hossack* (1838) 5 Cl & Fin 380, HL.

4 *Weldon v Bradshaw* (1873) IR 7 Eq 168. See also *Sheffield v Earl of Coventry* (1833) 2 Russ & M 317; *Milward v Milward* (1834) 3 My & K 311; *Napier v Staples* (1859) 10 I Ch R 344.

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(iii) Contracts to settle Land

642. Statutory requirements.

In order to be binding in law, a contract to settle land¹, must be made in writing incorporating all the terms² which the parties have expressly agreed and must be signed³ by or on behalf of each party to the contract⁴.

A person who makes a misrepresentation of fact, and thereby induces a marriage⁵, is, in accordance with the principle of estoppel by representation⁶, not allowed to deny its truth⁷.

1 As to articles for the settlement of land see PARA 631 ante.

2 The terms may be incorporated in a document either by being set out in it or by reference to some other document: see the Law of Property (Miscellaneous Provisions) Act 1989 s 2(2); and SALE OF LAND vol 42 (Reissue) PARA 29. As to contracts made out by correspondence see PARA 637 note 2 ante.

3 The signature must be so placed to show that it was intended to relate and refer to, and that it does in fact relate and refer to, every part of the instrument: see *Caton v Caton*(1867) LR 2 HL 127. As to the general requirements regarding signature see SALE OF LAND vol 42 (Reissue) PARA 39.

4 See the Law of Property (Miscellaneous Provisions) Act 1989 s 2; and SALE OF LAND vol 42 (Reissue) PARA 29.

5 As to representations of intention amounting to offers see PARA 637 ante.

6 See *Jorden v Money* (1854) 5 HL Cas 185 at 207; *Warden v Jones* (1857) 23 Beav 487 at 493 (on appeal 2 De G & J 76); and ESTOPPEL vol 16(2) (Reissue) PARA 1052 et seq.

7 *Graves v White* (1680) Freem Ch 57; *Gale v Lindo* (1687) 1 Vern 475; *Hunsden v Cheyney* (1690) 2 Vern 150; *Montefiori v Montefiori* (1762) 1 Wm Bl 363; *Neville v Wilkinson* (1782) 1 Bro CC 543; *Stone v Godfrey* (1854) 5 De GM & G 76; *Maunsell v White* (1854) 4 HL Cas 1039 at 1055; *Jorden v Money* (1854) 5 HL Cas 185; *Bold v Hutchinson* (1855) 3 Eq Rep 743 (affd 5 De GM & G 558); *M'Keogh v M'Keogh*(1870) IR 4 Eq 338. The doctrine does not apply where a solemn deed has been executed from which alone the intention of the parties can be gathered: *Monypenny v Monypenny* (1858) 4 K & J 174 (revsd as to the legal construction of the deed (1859) 3 De G & J 572; affd (1861) 9 HL Cas 114); and see *Kirwan v Burchell* (1859) 10 I Ch R 63. While it is not necessary that the party making the representation should know that it was false (see *Jorden v Money* supra at 212), there must be something in the nature of a warranty of the truth of the representation, and an innocent mistake common to all parties does not give rise to an estoppel by representation (*Merewether v Shaw* (1789) 2 Cox Eq Cas 124; *Ainslie v Medlycott* (1803) 9 Ves 13; *Evans v Wyatt* (1862) 31 Beav 217), although it may give rise to an estoppel by convention. Cf *Amalgamated Investment and Property Co Ltd v Texas Commerce International Bank Ltd*[1982] QB 84, [1981] 3 All ER 577, CA.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(3) CONTRACTS FOR SETTLEMENTS/(iii) Contracts to settle Land/643. Covenants to settle land.

643. Covenants to settle land.

A covenant to settle land, the covenantor possessing no land, or to purchase and settle land, is satisfied wholly or pro tanto by the purchase of land suitable for settlement, even if no settlement is actually made, and, where the covenantor dies having acquired that land, it is treated as against the persons entitled to his estate as being bound by the trusts of the settlement¹.

A contract or other liability to make a settlement of land entered into after 1925 and prior to 1 January 1997², was required to be carried into effect by means of a vesting deed and trust instrument³. A settlement of land created after 1 January 1997 (even if created pursuant to a contract entered into before that date) is a trust of land rather than a settlement under the Settled Land Act 1925⁴, and therefore the relevant formal requirements are to be found in the Law of Property Act 1925⁵.

If the contract relates to unregistered land it should generally be registered as an estate contract⁶.

1 See EQUITY vol 16(2) (Reissue) PARA 754.

2 Ie the date on which the Trusts of Land and Appointment of Trustees Act 1996 came into force: see the Trusts of Land and Appointment of Trustees Act 1996 (Commencement) Order 1996, SI 1996/2974; and PARA 676 post.

3 See the Settled Land Act 1925 ss 4, 11; and PARA 688 et seq post.

4 See the Trusts of Land and Appointment of Trustees Act 1996 s 2; and PARA 676 post. For the meaning of 'trust of land' see PARA 676 note 5 post.

5 See the Law of Property Act 1925 ss 52, 53(1)(b); and SALE OF LAND vol 42 (Reissue) PARA 40.

6 See the Land Charges Act 1972 s 2(4)(iv); and LAND CHARGES vol 26 (2004 Reissue) PARA 632. As to the effect of such registration see LAND CHARGES vol 26 (2004 Reissue) PARA 632. As to the protection of rights affecting registered land see LAND REGISTRATION vol 26 (2004 Reissue) PARA 992 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(4) COVENANTS FOR SETTLEMENT OF AFTER-ACQUIRED PROPERTY/(i) In general/644. Property not specifically settled.

(4) COVENANTS FOR SETTLEMENT OF AFTER-ACQUIRED PROPERTY

(i) In general

644. Property not specifically settled.

A provision sometimes inserted in marriage settlements is a covenant to settle property other than that which is the specific subject of the settlement¹. Such covenants may be so framed as to sweep in all property, both present and future, even if not specifically referred to², of one or both of the contracting parties³. Such a covenant is not a 'usual covenant', and ought not to be inserted without express instructions⁴. As it is executory it is enforceable only in favour of parties within the marriage consideration⁵, unless the property subsequently becomes vested in the trustees of the settlement⁶.

1 *Re Wyatt, Gowan v Wyatt* (1889) 60 LT 920; *Re Rogers' Settlement, Arnott v Rogers*[1951] Ch 450, [1951] 1 All ER 236. See also *Re Benett-Stanford Settlement Trusts, Atwood v Benett-Stanford*[1947] 1 All ER 888.

2 *Caldwell v Fellowes*(1870) LR 9 Eq 410 at 417 per James V-C.

3 Such a covenant may reach property of any kind (*Lewis v Madocks* (1810) 17 Ves 48), either personalty (*Lewis v Madocks* supra) or realty (*Prebble v Boghurst* (1818) 1 Swan 309; *Gubbins v Gubbins* (1825) 1 Dr & Wal 160n), or a leasehold interest (*Lord Churston v Buller* (1897) 77 LT 45). A covenant to settle all the covenantor's after-acquired property is not too vague or general to be enforced: *Re Turcan*(1888) 40 ChD 5, CA; *Re Reis, ex p Clough*[1904] 2 KB 769, CA (affd on other grounds [1905] AC 442, HL). See also *Syrett v Egerton*[1957] 3 All ER 331, [1957] 1 WLR 1130, DC; and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 233, 273. As to the effect on such a covenant of the settlor's bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 409 et seq.

4 *Re Maddy's Estate, Maddy v Maddy*[1901] 2 Ch 820. As to the usual powers and provisions see PARA 634 ante.

5 As to persons within the marriage consideration see PARAS 661-662 post.

6 See PARA 615 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(4) COVENANTS FOR SETTLEMENT OF AFTER-ACQUIRED PROPERTY/(i) In general/645. Construction.

645. Construction.

The question whether property falls within the covenant or not depends in every case upon the construction of the particular covenant¹. The instrument which contains the covenant is read as a whole, and the generality of the covenant may be cut down by reference to other parts of the instrument², or an ambiguity in the covenant may be explained by the recitals³. However, a covenant in clear terms is not restricted by a recital⁴. If possible, a covenant must be construed in such a way as not to extend to an interest which, if the covenant applied to it, would be destroyed at the moment of its creation⁵.

Covenants to settle are contracts which must be performed in strict accordance with their terms⁶. Therefore general words are rejected, and a covenant to settle property derived from a particular source does not attach to property coming from another source or under another title⁷. If land is purchased out of the proceeds of personal property bound by a covenant of this kind, the land is charged with the money improperly invested⁸.

1 *Scholfield v Spooner* (1884) 26 ChD 94, CA; *Re Ellis's Settlement, Ellis v Ellis* [1909] 1 Ch 618. As to covenants to settle property other than that which is the specific subject of the settlement see PARA 644 ante.

2 *Re Stephenson's Trusts, ex p Stephenson* (1853) 3 De GM & G 969; *Hammond v Hammond* (1854) 19 Beav 29; *Re Neal's Trusts* (1857) 4 Jur NS 6; *Childers v Eardley* (1860) 28 Beav 648; *Young v Smith* (1865) 35 Beav 87; *Re Michell's Trusts* (1878) 9 ChD 5, CA; *Re Garnett, Robinson v Gandy* (1886) 33 ChD 300, CA.

3 *MacLurcan v Lane, Melhuish v MacLurcan* (1858) 5 Jur NS 56; *Re Michell's Trusts* (1878) 9 ChD 5, CA; *Re De Ros' Trust, Hardwicke v Wilmot* (1885) 31 ChD 81, CA; *Re Coghlan, Broughton v Broughton* [1894] 3 Ch 76. See also DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 217, 219.

4 *Re Owen's Trust* (1855) 1 Jur NS 1069; *Burn-Murdoch v Charlesworth* (1875) 23 WR 743; *Dawes v Tredwell* (1881) 18 ChD 354, CA. See also DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 217-218.

5 *Re Crawshay, Walker v Crawshay* [1891] 3 Ch 176; *Re Smith, Franklin v Smith* [1928] Ch 10. In both those cases the covenant preceded the acquisition under another instrument of a protected life interest. However, an attempted assignment by a person already entitled to a protected life interest may cause a forfeiture: see PARAS 917-918 post.

6 *Re Van Straubenzee, Boustead v Cooper* [1901] 2 Ch 779, where it was held that there is no ground for applying the rule in *Howe v Earl Dartmouth, Howe v Countess of Aylesbury* (1802) 7 Ves 137 (see EXECUTORS AND ADMINISTRATORS), to property settled by such a covenant. See also *Hope v Hope* (1855) 1 Jur NS 770; *Brooke v Hicks* (1864) 10 LT 404.

7 *Williams v Williams* (1782) 1 Bro CC 152; *Tayleur v Dickenson* (1826) 1 Russ 521; *Ibbetson v Grote* (1858) 25 Beav 17; *Childers v Eardley* (1860) 28 Beav 648; *Parkinson v Dashwood* (1861) 30 Beav 49; *Evans v Jennings* (1862) 1 New Rep 178; *Edwards v Broughton* (1863) 32 Beav 667. Cf *Re Stephenson's Trusts, ex p Stephenson* (1853) 3 De GM & G 969; *Re Neal's Trusts* (1857) 4 Jur NS 6; but see *Re Frowd's Settlement* (1864) 4 New Rep 54; *Re Crawshay, Walker v Crawshay* [1891] 3 Ch 176. An assignment of an interest in property for the time being subject to the trusts of a settlement is not a contract to assign any interest that may subsequently be acquired (*Re Walpole's Marriage Settlement, Thomson v Walpole* [1903] 1 Ch 928), and an agreement to settle property to which the covenantor 'may be' entitled does not bind future property (*Re Ridley's Agreement, Ridley v Ridley* (1911) 55 Sol Jo 838).

8 *Lewis v Madocks* (1810) 17 Ves 48.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(4) COVENANTS FOR SETTLEMENT OF AFTER-ACQUIRED PROPERTY/(ii) Effect of the Covenant on Particular Interests in Property/646. Property incapable of assurance.

(ii) Effect of the Covenant on Particular Interests in Property

646. Property incapable of assurance.

The proper construction of a covenant to settle after-acquired property is that the property is to be conveyed for such estate and interest as is actually taken in it by the covenantor¹. Therefore, property which is incapable of assurance², or in which the covenantor acquires an interest which cannot be effectively assured, such as an entailed interest³ or a protected life interest⁴, or a mere spes successionis or a contingent claim for damages which could not arise until after the husband's death⁵, is not caught by the covenant.

1 See also PARAS 644-645 ante.

2 See *Re Pearse's Settlement, Pearse v Pearse*[1909] 1 Ch 304.

3 *Hilbers v Parkinson*(1883) 25 ChD 200; *Re Dunsany's Settlement, Nott v Dunsany*[1906] 1 Ch 578, CA. As to entailed interests see PARA 715 et seq post; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq. Entailed interests can no longer be created: see PARAS 609, 611 ante, 677 post.

4 *Brooks v Keith* (1861) 1 Drew & Sm 462; *Re Allnutt, Pott v Brassey*(1882) 22 ChD 275; *Re Currey, Gibson v Way*(1886) 32 ChD 361; *Re Crawshay, Walker v Crawshay*[1891] 3 Ch 176; *Re Smith, Franklin v Smith*[1928] Ch 10. See, however, *Re Haynes' Will Trusts, Pitt v Haynes*[1949] Ch 5, [1948] 2 All ER 243, where the acquisition of the protected life interest preceded the covenant.

5 *Re Simpson, Simpson v Simpson*[1904] 1 Ch 1, CA. See also *Re Mudge*[1914] 1 Ch 115, CA.

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647. Property which does not fit the trusts.

If the property does not fit the trusts of the settlement, it may be assumed that it was not intended to come within the covenant to settle after-acquired property¹. In accordance with this principle the covenant has been held, in the absence of express words, not to attach to a life interest² or to an annuity³, or to investments which represent savings of income which is not subject to the covenant⁴.

1 *Re Mainwaring's Settlement* (1866) LR 2 Eq 487; *Scholfield v Spooner* (1884) 26 ChD 94, CA.

2 *White v Briggs* (1848) 22 Beav 176n; *St Aubyn v Humphreys* (1856) 22 Beav 175; *Townshend v Harrowby* (1858) 27 Lj Ch 553.

3 *Re Dowding's Settlement Trusts, Gregory v Dowding* [1904] 1 Ch 441. However, a share of residue directed to be applied in the purchase of an annuity is caught by the covenant: *Re Butler, Beatty v Vance* [1916] 1 IR 66.

4 *Finlay v Darling* [1897] 1 Ch 719; *Re Clutterbuck's Settlement, Bloxam v Clutterbuck* [1905] 1 Ch 200 (approved in *Mackenzie v Allardes* [1905] AC 285, HL), dissenting from *Re Bendy, Wallis v Bendy* [1895] 1 Ch 109, which must be taken to be overruled. Cf *Hughes v Jones* (1863) 1 Hem & M 765; *Churchill v Denny* (1875) LR 20 Eq 534; *Re Biscoe, Biscoe v Biscoe* (1914) 111 LT 902.

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Effect of the Covenant on Particular Interests in Property/648. Interests existing at the date of the covenant.

648. Interests existing at the date of the covenant.

Interests existing at the date of the covenant are not caught by a covenant to settle property to which the covenantor is to become entitled during the marriage¹, although such interests will be caught by a covenant which on its true construction extends to present interests². Whether a covenant extends to property to which the covenantor is entitled at the date of the covenant depends upon the language of the particular instrument³, but such property is not subsequently brought within its operation by reason of an increase in value⁴, or by a change of investment⁵ or character, as for instance by the sale for a lump sum of an annuity which was not caught by the covenant⁶.

1 *Prebble v Boghurst* (1818) 1 Swan 309 at 321; *Hoare v Hornsby* (1843) 2 Y & C Ch Cas 121; *Otter v Melvill* (1848) 2 De G & Sm 257; *Wilton v Colvin* (1856) 3 Drew 617; *Archer v Kelly* (1860) 1 Drew & Sm 300; *Churchill v Shepherd* (1863) 33 Beav 107; *Re Clinton's Trust, Hollway's Fund, Re Clinton's Trust, Weare's Fund* (1871) LR 13 Eq 295; *Re Jones' Will* (1876) 2 ChD 362; *Re Garnett, Robinson v Gandy* (1886) 33 ChD 300, CA; *Re Atkinson's Trusts, ex p Fitzroy* [1895] 1 IR 230. See also *Re Bland's Settlement, Bland v Perkin* [1905] 1 Ch 4; and PARA 650 note 1 post. Cf *Re Blockley, Blockley v Blockley* (1884) 49 LT 805.

2 See the text and notes 3-6 infra.

3 *Grafftey v Humpage* (1839) 3 Jur 622; *James v Durant* (1839) 2 Beav 177; *Blythe v Granville* (1842) 13 Sim 190; *MacLurcan v Lane, Melhuish v MacLurcan* (1858) 5 Jur NS 56; *Re Hughes's Trusts* (1863) 4 Giff 432; *Rose v Cornish* (1867) 16 LT 786; *Re Viant's Settlement Trusts* (1874) LR 18 Eq 436; *Williams v Mercier* (1884) 10 App Cas 1, HL; *Re Cazenove, Perkin v Bland* (1919) 122 LT 181. Cf *Re Wass, ex p Evans* (1852) 2 De GM & G 948. In some of these cases covenants or agreements binding the husband to settle property to which the wife, or the husband in her right, should become entitled during the marriage were held to cover property to which she was entitled at the date of the covenant, the words of futurity being satisfied by the interest acquired by him immediately on marriage. In some cases the decision was also founded on the language of other parts of the instrument (*Williams v Mercier* (1884) 10 App Cas 1, HL) or on expressions found in instruments other than the settlement (*Hamilton v James* (1877) IR 11 Eq 223; and see *Re Wyndham's Trusts* (1865) LR 1 Eq 290). However, it seems impossible to reconcile all the cases.

4 *Re Browne's Will* (1869) LR 7 Eq 231. Cf *Re Garnett, Robinson v Gandy* (1886) 33 ChD 300, CA.

5 *Mackenzie v Allardes* [1905] AC 285 at 293, HL, per Lord Macnaghten.

6 *Churchill v Denny* (1875) LR 20 Eq 534; *Re Biscoe, Biscoe v Biscoe* (1914) 111 LT 902.

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649. Property acquired after the termination of the marriage.

As the primary object of a covenant to settle the future property of a wife is to prevent it falling under the control or influence of the husband, in the absence of expressions showing a contrary intention, only property accruing to her during the intended marriage comes within its operation¹. This is so even though the covenant relates only to property coming from a specified source². On the same principle, a covenant to settle property to be acquired during the intended marriage does not attach to property the title to which has accrued after the making of a decree absolute for divorce³. Similarly, property acquired by a wife under her husband's will, unlike property acquired by her from her husband by way of gift *inter vivos*⁴, is *prima facie* not caught by the covenant⁵, nor is a joint interest given to the husband and wife⁶.

1 *Howell v Howell, Howell v James* (1835) 4 L.J. Ch 242; *Godsal v Webb* (1838) 2 Keen 99; *Reid v Kenrick* (1855) 1 Jur NS 897; *Dickinson v Dillwyn* (1869) LR 8 Eq 546; *Carter v Carter* (1869) LR 8 Eq 551; *Alleyne v Hussey* (1873) 22 WR 203; *Re Edwards* (1873) 9 Ch App 97 (overruling on this point *Stevens v Van Voorst* (1853) 17 Beav 305); *Holloway v Holloway* (1877) 25 WR 575; *Re Coghlan, Broughton v Broughton* [1894] 3 Ch 76. See also *Re Peel's Settlement, Millard v Peel* [1964] 3 All ER 567, [1964] 1 WLR 1232. The fictitious survivorship created by the Wills Act 1837 s 33 (as originally enacted) (which applies in relation to wills of testators who died before 1 January 1983: see WILLS vol 50 (2005 Reissue) PARAS 457-458), did not prolong the marriage so as to bring within the terms of the covenant property actually acquired after the termination of the marriage: *Pearce v Graham* (1863) 9 Jur NS 568. See now the Wills Act 1837 s 33 (as substituted); and WILLS vol 50 (2005 Reissue) PARA 459. See also *Re Blundell, Blundell v Blundell* [1906] 2 Ch 222 at 229.

2 *Re Campbell's Policies* (1877) 6 ChD 686.

3 Since a marriage continues until a decree absolute is made (see *Sinclair v Fell* [1913] 1 Ch 155; *Fender v St John-Mildmay* [1938] AC 1, [1937] 3 All ER 402; and MATRIMONIAL AND CIVIL PARTNERSHIP LAW), property the title to which accrues between decree nisi and absolute will be caught (see *Sinclair v Fell* supra). *Re Pearson's Trusts* (1872) 26 LT 393, where the contrary was held, must be considered as overruled: *Sinclair v Fell* supra at 166. A covenant to settle property to be acquired during the intended marriage did not attach to property the title to which accrued after the making of a decree of judicial separation: see *Dawes v Creyke* (1885) 30 ChD 500; *Davenport v Marshall* [1902] 1 Ch 82. However, these decisions were based on the Matrimonial Causes Act 1857 s 25 (repealed), which had the effect of putting the wife in the position of a feme sole as regards property, and, in consequence of the repeal of that provision, these decisions can no longer be regarded as applicable. Cf *Re Bankes, Reynolds v Ellis* [1902] 2 Ch 333. See also MATRIMONIAL AND CIVIL PARTNERSHIP LAW.

4 See PARA 653 note 2 post.

5 *Dickinson v Dillwyn* (1869) LR 8 Eq 546; *Carter v Carter* (1869) LR 8 Eq 551.

6 *Edye v Addison* (1863) 1 Hem & M 781.

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Effect of the Covenant on Particular Interests in Property/650. Reversionary interests.

650. Reversionary interests.

A covenant to settle property to which the covenantor may or will at any time during the marriage become entitled does not extend to a reversionary interest which is already vested at the date of the covenant, whether it falls into possession during¹ or after² the marriage; but a covenant which binds a wife to settle her present and future property extends to reversionary interests to which she is entitled at the date of the covenant or acquires during the marriage, and a covenant which binds her to settle all her future acquired property extends to reversionary interests to which she becomes entitled during the marriage, notwithstanding in either case that the reversion does not fall in during the marriage³. Even if there are technical difficulties in the way of getting a conveyance, such property is bound in the hands of everyone, including the covenantor's personal representatives⁴.

1 *Re Bland's Settlement, Bland v Perkin* [1905] 1 Ch 4, followed in *Re Yardley's Settlement, Milward v Yardley* (1908) 124 LT Jo 315; *Re Capel's Trusts, Arbuthnot v Galloway* [1914] WN 378; *Re Thompson's Settlements, Allen v Pack* (1915) 139 LT Jo 211; *Re Maltby Marriage Settlement, Aylen v Gaud* [1953] 2 All ER 220, [1953] 1 WLR 765; *Re Peel's Settlement, Millard v Peel* [1964] 3 All ER 567, [1964] 1 WLR 1232. However, the cases are not easy to reconcile: see *Blythe v Granville* (1842) 13 Sim 190; *Re London Dock Co, ex p Blake* (1853) 16 Beav 463; *Spring v Pride* (1864) 4 De GJ & Sm 395; *Re Clinton's Trust, Hollway's Fund, Re Clinton's Trust, Weare's Fund* (1871) LR 13 Eq 295; *Re Brook, Brook v Hirst* (1914) 111 LT 36; *Re Crook's Settlement, Re Glasier's Settlement, Crook v Preston* [1923] 2 Ch 339.

2 *Re Pedder's Settlement Trusts* (1870) LR 10 Eq 585; *Re Clinton's Trusts, Hollway's Fund, Re Clinton's Trust, Weare's Fund* (1871) LR 13 Eq 295. See also *Cannon v Hartley* [1949] Ch 213, [1949] 1 All ER 50.

3 *Grafftey v Humpage* (1839) 3 Jur 622; *Butcher v Butcher* (1851) 14 Beav 222; *Spring v Pride* (1864) 4 De GJ & Sm 395; *Re Mackenzie's Settlement* (1867) 2 Ch App 345; *Caldwell v Fellowes* (1870) LR 9 Eq 410; *Agar v George* (1876) 2 ChD 706; *Re D'Estampes' Settlement, D'Estampes v Crowe* (1884) 53 LJ Ch 1117; *Re Roy's Settlement, Jebb v Roy* (1906) 50 Sol Jo 256. See also *Giles v Homes* (1846) 15 Sim 359; *Re Hewett, Hewett v Hallett* [1894] 1 Ch 362 at 365; *Lloyd v Prichard* [1908] 1 Ch 265. Cf *Re Brook, Brook v Hirst* (1914) 111 LT 36; *Cannon v Hartley* [1949] Ch 213, [1949] 1 All ER 50.

4 *Lloyd v Prichard* [1908] 1 Ch 265.

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651. Contingent and defeasible interests.

A covenant which binds a wife to settle all her present and future property extends to contingent or defeasible interests, whether in possession or remainder¹, and whether the contingency happens or the interest becomes indefeasible during or after the marriage². However, a covenant to settle future property only does not extend to a contingent or defeasible interest existing at the date of the covenant merely because it vests in interest or becomes indefeasible during the marriage³, although it will extend to any such interest which falls into possession during the marriage⁴.

1 *Agar v George* (1876) 2 ChD 706; *Cornmell v Keith* (1876) 3 ChD 767; *Re Jackson's Will* (1879) 13 ChD 189; *Re Ware, Cumberlege v Cumberlege-Ware* (1890) 45 ChD 269; *Re Hewett, Hewett v Hallett* [1894] 1 Ch 362 at 365; *Lloyd v Prichard* [1908] 1 Ch 265. *Atcherley v Du Moulin* (1855) 2 K & J 186 and *Dering v Kynaston* (1868) LR 6 Eq 210, where it was held that contingent interests are not within such a covenant, must be treated as overruled: *Agar v George* supra. As to conditions of defeasance see PARA 740 et seq post.

2 *Brooks v Keith* (1861) 1 Drew & Sm 462; *Agar v George* (1876) 2 ChD 706; *Lloyd v Prichard* [1908] 1 Ch 265.

3 *Re Michell's Trusts* (1878) 9 ChD 5, CA. Cf *Re Cazenove, Perkin v Bland* (1919) 122 LT 181.

4 *Archer v Kelly* (1860) 1 Drew & Sm 300; *Brooks v Keith* (1861) 1 Drew & Sm 462; *Re Worsley's Trusts* (1867) 16 LT 826; *Re Williams' Settlement, Williams v Williams* [1911] 1 Ch 441; *Re Crook's Settlement, Re Glasier's Settlement, Crook v Preston* [1923] 2 Ch 339; *Re Peel's Settlement, Millard v Peel* [1964] 3 All ER 567, [1964] 1 WLR 1232.

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Effect of the Covenant on Particular Interests in Property/652. Interests under appointments and in default of appointment.

652. Interests under appointments and in default of appointment.

An interest in default of appointment is a vested or contingent interest (as appropriate) subject to defeasance¹ and is capable of being bound by a covenant to settle present or future acquired property², but property acquired under an exercise of a power is derived under a new title, even where there is a gift over to the covenantor in default of appointment, and such property is not caught by a covenant which does not extend to future property³. Property over which the covenantor possesses a general power of appointment will not be caught unless the power is so exercised as to bring the property within the covenant⁴, even if the covenantor is entitled in default of appointment⁵.

1 As to conditions of defeasance see PARA 740 et seq post. As to powers of appointment see PARA 922 et seq post.

2 *Re Jackson's Will* (1879) 13 ChD 189.

3 *Sweetapple v Horlock* (1879) 11 ChD 745; *Re De la Bere's Marriage Settlement Trusts, De la Bere v Public Trustee* [1941] Ch 443, [1941] 2 All ER 533. See also *Muir (or Williams) v Muir* [1943] AC 468, HL; *Re Dowie's Will Trusts, Re Marriage Settlement of 24 September 1936, Barlas v Pennefather* [1949] Ch 547, [1949] 1 All ER 968; *Re Maltby Marriage Settlement, Aylen v Gaud* [1953] 2 All ER 220, [1953] 1 WLR 765.

4 *Ewart v Ewart* (1853) 1 Eq Rep 536; *Townshend v Harrowby* (1858) 27 LJ Ch 553; *Bower v Smith* (1871) LR 11 Eq 279.

5 The authorities are conflicting, but it is submitted that the statement in the text represents the better view: see *Townshend v Harrowby* (1858) 27 LJ Ch 553; *Re Lord Gerard, Oliphant v Gerard* (1888) 58 LT 800; *Tremayne v Rashleigh* [1908] 1 Ch 681; *Vetch v Elder* [1908] WN 137. See to the contrary *Steward v Poppleton* [1877] WN 29; *Re O'Connell, Mawle v Jagoe* [1903] 2 Ch 574.

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(iii) Express Exceptions from the Covenant

653. Property and interests commonly excepted.

It is usual to except from the operation of the covenant to settle after-acquired property: (1) property of less than a specified value acquired from a single source¹; (2) gifts by the husband to the wife inter vivos²; (3) property purchased by the wife with savings from her income³; (4) life and other limited interests⁴; (5) jewels and other personal chattels⁵; (6) property which, if bound, would be liable to forfeiture⁶; and (7) property as to which the donor has expressed an intention that it should be exempt from the covenant or any similar provision⁷. Other kinds of property may also be excepted. It is desirable that any property which it is intended to exclude should be expressly mentioned⁸.

1 See PARA 654 post.

2 Prima facie such gifts will be caught by the covenant: *Re Ellis's Settlement, Ellis v Ellis*[1909] 1 Ch 618; *Re Plumptre's Marriage Settlement, Underhill v Plumptre*[1910] 1 Ch 609; *Re Pryce, Neville v Pryce*[1917] 1 Ch 234. However, see to the contrary *Coles v Coles*[1901] 1 Ch 711; *Kingan v Matier*[1905] 1 IR 272. In *Leigh-White v Ruttledge*[1914] 1 IR 135, Barton J followed *Re Ellis's Settlement, Ellis v Ellis* supra, and *Re Plumptre's Marriage Settlement, Underhill v Plumptre* supra, in preference to his own decision in *Kingan v Matier* supra.

3 Such property will probably not be caught: *Finlay v Darling*[1897] 1 Ch 719; *Re Clutterbuck's Settlement, Bloxham v Clutterbuck*[1905] 1 Ch 200; *Mackenzie v Allardes*[1905] AC 285, HL. *Re Bendy, Wallis v Bendy*[1895] 1 Ch 109, where the contrary was decided, must be taken to have been overruled.

4 See *Scholfield v Spooner*(1884) 26 ChD 94. However see to the contrary *Re Dowding's Settlement Trusts, Gregory v Dowding*[1904] 1 Ch 441.

5 See PARA 656 post.

6 See PARA 646 ante.

7 See PARA 657 post.

8 As to the construction of covenants see PARA 645 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(4) COVENANTS FOR SETTLEMENT OF AFTER-ACQUIRED PROPERTY/(iii) Express Exceptions from the Covenant/654. Limitation as to amount, time and source.

654. Limitation as to amount, time and source.

If it is intended to except from the operation of the covenant after-acquired property not exceeding a specified amount, it is usual to provide expressly that this exception is to apply to property acquired at any one time from any one source. Even if the words 'from any one source' are not inserted they are implied, and any particular fund to which the covenantor becomes entitled does not fall within the covenant unless by itself it amounts to the specified sum¹.

A legacy and a share of residue given by the same will are derived under different titles and must not be added together and treated as one sum for the purpose of seeing whether the specified amount is reached²; nor in making the computation may there be taken into consideration the value of property which cannot be affected by the covenant at all³, or to which the covenantor becomes entitled under the same instrument, but not at one and the same time⁴. If property in excess of the specified amount is bequeathed upon such trusts as the covenantor may appoint, with a gift over to a stranger in default of appointment, it is open to the covenantor to defeat the covenant by a series of appointments in his own favour, each of less than the specified amount⁵; but a fund which would otherwise be bound is not withdrawn from the operation of the covenant by reason of a part of it having been paid to the covenantor under a power of advancement⁶.

1 *Re Hooper's Trust* (1865) 11 Jur NS 479; *Hood v Franklin* (1873) LR 16 Eq 496; *Re Hughes' Settlement, Hughes v Schooling, Re Smith, Hughes v Schooling* [1924] 2 Ch 356. *St Leger v Magniac* [1880] WN 183, where the covenant was to settle property to which the wife should become entitled 'at one time', and was held to cover sums of money coming from different sources but falling into possession at the same time, would probably not now be followed.

2 *Re Middleton's Will* (1868) 16 WR 1107. Cf *Re Davies, Harrison v Davis* [1897] 2 Ch 204. A legacy out of general estate and another out of real estate should, however, be aggregated for the purposes of the covenant: *Re Pares, Re Scott Chad, Scott Chad v Pares* [1901] 1 Ch 708, which did not purport to differ from *Re Middleton's Will* supra, although it is difficult to see how the two cases can be reconciled. See also *Re Mackenzie's Settlement* (1867) 2 Ch App 345. As to legacies and shares of residue see WILLS vol 50 (2005 Reissue) PARAS 315, 589.

3 *Forster v Davies* (1861) 4 De GF & J 133.

4 *Buller v Hornby* (1871) 25 LT 901.

5 *Bower v Smith* (1871) LR 11 Eq 279. If the gift over is to the donee of the power, there is a conflict of judicial opinion as to whether the covenant can be evaded by a series of appointments: see *Re O'Connell, Mawle v Jagoe* [1903] 2 Ch 574; *Steward v Poppleton* [1877] WN 29, for authority that it cannot be evaded. For the opposite view see *Townshend v Harrowby* (1858) 27 LJ Ch 553; *Re Lord Gerard, Oliphant v Gerard* (1888) 58 LT 800; *Tremayne v Rashleigh* [1908] 1 Ch 681.

6 *Hood v Franklin* (1873) LR 16 Eq 496. As to powers of advancement see PARA 667 post.

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655. Estimate of value.

In estimating whether the specified amount is reached, the beneficial receipt of the covenantor and not the amount of the gift must be considered¹. Where the interest is reversionary, the value must be ascertained, not by estimating its value as a reversion², but according to the actual amount received when it falls into possession³. If, as is often the case, the true intention is only to settle interests the value of which as such exceeds a specified amount at the time at which the covenant attaches, it is in the present state of the authorities necessary to frame the clause very carefully⁴.

1 *Re Pares, Re Scott Chad, Scott Chad v Pares* [1901] 1 Ch 708.

2 *Re Mackenzie's Settlement* (1867) 2 Ch App 345; *Cornmell v Keith* (1876) 3 ChD 767; *Re Clinton's Trust, Hollway's Fund, Re Clinton's Trust, Weare's Fund* (1871) LR 13 Eq 295 at 306.

3 *Re Hughes' Settlement, Hughes v Schooling, Re Smith, Hughes v Schooling* [1924] 2 Ch 356, where it was pointed out that, although there are passages in the judgments in each of the cases cited in note 2 supra, which suggest that the value should be the value of the property (not the value of the reversionary interest) at the date when the covenant attaches, the question of the date of valuation does not appear to have been before the court in any of those cases. See also *Re Welstead, Welstead v Leeds* (1882) 47 LT 331, where it was held that a reversionary interest which fell in after the termination of the marriage was not brought within the operation of the covenant because the value never exceeded the specified amount during the marriage, although the actual amount received did. The value of an endowment policy effected by a husband in favour of his wife must be ascertained at the time when the policy was effected: *Re Harcourt, White v Harcourt* (1911) 105 LT 747.

4 See note 3 supra.

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656. Jewels and personal chattels.

If it is desired to except from the operation of the covenant jewels and personal chattels, this must be done by express words, as no such exception is implied¹.

1 *Willoughby v Middleton* (1862) 2 John & H 344. Consumable goods are not included: *Willoughby v Middleton* supra at 355. Such an exception was held not to cover pictures and furniture forming part of an intestate's estate to a share of which the covenantor had become entitled as one of the next of kin: *Vanneck v Benham* [1917] 1 Ch 60. See also *Re Cunliffe-Owen, Mountain v IRC* [1953] Ch 545, [1953] 2 All ER 196, CA.

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657. Donor's intention to exempt from the covenant.

If the terms of the covenant exempt property as to which, in the instrument under which it is acquired¹, an intention is expressed that it is to be exempt from the covenant or any provision of a like nature, a gift for a declared purpose wholly inconsistent with its application under the covenant is within the exception, whether or not the donor is aware of the covenant². However, if the covenant, on its true construction, does attach to property subsequently acquired, the donor's intention that it should not be bound cannot operate to exclude it³.

1 Where property is acquired under a power of appointment, the instrument exercising the power is the instrument under which it is acquired: *Sweetapple v Horlock* (1879) 11 ChD 745; *Re De la Bere's Marriage Settlement Trusts, De la Bere v Public Trustee* [1941] Ch 443, [1941] 2 All ER 533; *Muir (or Williams) v Muir* [1943] AC 468 at 485-486, HL, per Lord Romer.

2 *Re Thorne, Thorne v Campbell-Preston* [1917] 1 Ch 360.

3 *Scholfield v Spooner* (1884) 26 ChD 94, CA, overruling on this point *Re Mainwaring's Settlement* (1866) LR 2 Eq 487, which had been followed in the Irish case of *Re Portadown, Dungannon and Omagh Junction Rly Co, ex p Young* (1867) 15 WR 979. See also *Re Wharton, Wharton v Barmby* (1910) 102 LT 531; *Re Thorne, Thorne v Campbell-Preston* [1917] 1 Ch 360; *Re Smith, Franklin v Smith* [1928] Ch 10. However, a settlement can be rectified in appropriate circumstances: see MISTAKE vol 77 (2010) PARA 57 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(4) COVENANTS FOR SETTLEMENT OF AFTER-ACQUIRED PROPERTY/(iv) Express Covenants by Husband and Wife/658. What parties are bound.

(iv) Express Covenants by Husband and Wife

658. What parties are bound.

Whether a covenant is binding on the husband alone or on both husband and wife is a question of the construction of the particular instrument. In some cases a covenant in terms made by the husband alone will be binding on him alone notwithstanding that it has been prefaced by the words 'it is hereby agreed and declared'¹. In general, the party who is to do the thing which is covenanted to be done is alone bound to perform the covenant². On the other hand, where words of general agreement have prefaced a covenant by the husband alone that property coming to the wife, or under the former law to him in her right, is to be settled, the agreement has been treated as an agreement by both parties³. In the absence of words of general agreement, a covenant by the husband alone is his contract only⁴, but joint and several covenants to settle by the husband and wife bind both parties⁵. However, it has been held that there is a covenant by the husband and wife which binds her property where the wife has been party to and has assented to the deed, and there is a covenant by the husband alone, even if it was not prefaced by words of general agreement, that he would settle the wife's property⁶, or that the husband and wife should settle the wife's property⁷, or even that the wife's property should be settled⁸.

1 *Ramsden v Smith* (1854) 2 Drew 298; *Reid v Kenrick* (1855) 1 Jur NS 897; *Dawes v Tredwell*(1881) 18 ChD 354, CA; *Re Macpherson, Macpherson v Macpherson* (1886) 55 LJ Ch 922.

2 *Ramsden v Smith* (1854) 2 Drew 298.

3 *Butcher v Butcher* (1851) 14 Beav 222; *Stevens v Van Voorst* (1853) 17 Beav 305; *Townshend v Harrowby* (1858) 27 LJ Ch 553; *Willoughby v Middleton* (1862) 2 John & H 344; *Campbell v Bainbridge*(1868) LR 6 Eq 269; *Re D'Estampes' Settlement, D'Estampes v Crowe* (1884) 53 LJ Ch 1117. See also *Master v De Croismar* (1848) 11 Beav 184.

4 *Douglas v Congreve* (1836) 1 Keen 410; *Thornton v Bright* (1836) 2 My & Cr 230; *Hammond v Hammond* (1854) 19 Beav 29; *Young v Smith*(1865) LR 1 Eq 180; *Re Smith, Robson v Tidy* [1900] WN 75.

5 *Tawney v Ward* (1839) 1 Beav 563; *Milford v Peile* (1854) 17 Beav 602.

6 *Lee v Lee*(1876) 4 ChD 175.

7 *Re De Ros' Trust, Hardwicke v Wilmot*(1885) 31 ChD 81.

8 *Re Haden, Coling v Haden*[1898] 2 Ch 220.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(5) CONSIDERATION/659. Consideration in general.

(5) CONSIDERATION

659. Consideration in general.

Settlements may either be for valuable consideration or voluntary¹. If there is consideration then, unless it is plainly illusory², the court does not inquire into its adequacy³, and treats the settlement as made for value⁴. A valid marriage by itself, irrespective of any pecuniary benefit or consideration, constitutes a valuable consideration for a settlement⁵; and a marriage that takes place on the faith of a voluntary settlement may supply consideration ex post facto⁶. An ordinary resettlement, even if it does not contain provisions which would amount to a valuable consideration, is supported by the court as a family arrangement⁷.

1 For a definition of valuable consideration see *Currie v Misa*(1875) LR 10 Exch 153 at 162 per Lush J; and CONTRACT vol 9(1) (Reissue) PARA 735 et seq. As to the enforceability of settlements see PARA 615 ante; and as to the avoidance of settlements see PARA 616 ante.

2 *Kelson v Lord Kelson* (1853) 10 Hare 385; *Cornish v Clark*(1872) LR 14 Eq 184.

3 *Townend v Toker*(1866) 1 Ch App 446.

4 *Myddleton v Lord Kenyon* (1794) 2 Ves 391 at 410; *Harman v Richards* (1852) 10 Hare 81. Except in the case of persons within the marriage consideration (see PARAS 660-661 post) or to whom the marriage consideration extends (see PARA 662 post), a settlement for consideration not moving from the beneficiaries or trustees is not treated as being for value: *Re Cook's Settlement Trusts, Royal Exchange Assurance v Cook*[1965] Ch 902, [1964] 3 All ER 898.

5 *Ex p Marsh* (1744) 1 Atk 158; *Churchman v Harvey* (1757) Amb 335 at 340; *Prebble v Boghurst* (1818) 1 Swan 309 at 319; *Fraser v Thompson* (1859) 4 De G & J 659. See also *R v Lopen Inhabitants* (1788) 2 Term Rep 577. As to transactions defrauding creditors see, however, the Insolvency Act 1986 s 423; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 664 et seq. As to when a gift is treated as being in consideration of marriage for tax purposes see PARA 661 note 3 post.

6 *Prodger v Langham* (1663) 1 Sid 133; *Brown v Carter* (1801) 5 Ves 862; *Guardian Assurance Co v Viscount of Avonmore*(1872) IR 6 Eq 391; *Greenwood v Lutman*[1915] 1 IR 266. See also MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 876.

7 As to the nature and purpose of resettlements see PARA 606 ante; and as to family arrangements generally see PARA 1002 et seq post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(5) CONSIDERATION/660. Marriage as consideration.

660. Marriage as consideration.

To constitute valuable consideration the marriage contemplated must be one which the parties are legally capable of contracting¹. If the contemplated marriage is one which cannot be legally contracted, the settlement is at best a voluntary settlement². In such a settlement trusts to take effect from and after the solemnisation of the marriage will fail totally, marriage being construed to mean a legal and effectual marriage³, and evidence of the knowledge and intention of the parties not being admissible to show that the words used mean something else⁴. Moreover, if the domicile of the parties remains unchanged, it makes no difference that the marriage is legal in the country in which it is celebrated⁵.

1 *Ford v De Pontès, De Pontès v Kendall* (1861) 30 Beav 572; *Coulson v Allison* (1860) 2 De GF & J 521. As to what marriages are legal see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 1 et seq.

2 *Seale v Lowndes* (1868) 17 LT 555.

3 A decree of nullity granted after 31 July 1971 in respect of a voidable marriage operates to annul the marriage only as respects any time after the decree has been made absolute, and notwithstanding the decree, the marriage is treated as if it existed up to that time: see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 331 et seq.

4 *Chapman v Bradley* (1863) 4 De GJ & Sm 71; *Pawson v Brown* (1879) 13 ChD 202; *Neale v Neale* (1898) 79 LT 629, CA; *Phillips v Probyn* [1899] 1 Ch 811.

5 *Chapman v Bradley* (1863) 4 De GJ & Sm 71. As to what marriages are recognised by English law see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 208 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(5) CONSIDERATION/661. Persons within the marriage consideration.

661. Persons within the marriage consideration.

The husband and wife and children or remoter issue¹ of the marriage² are within the consideration of marriage³.

All other persons for whom provision is made by a settlement, such as children of a former marriage⁴, an illegitimate child⁵, children of a future marriage⁶, next of kin⁷, collateral relations⁸ and a stranger⁹, are volunteers whose interests, if the subject is land, are liable to be defeated in favour of a subsequent purchaser for valuable consideration¹⁰, or, whether land or personality, of the creditors of the settlor¹¹. They cannot enforce a contract for settlement against the settlor¹², although an executory settlement in favour of volunteers is enforceable if the trustees of the settlement subsequently become the legal owners of the property¹³, and a completed trust in favour of volunteers cannot be set aside by a settlor¹⁴.

1 *Macdonald v Scott* [1893] AC 642 at 650, HL. Trustees of a marriage settlement are entitled to enforce on behalf of persons within the marriage consideration a contract contained in it: *Pullan v Koe* [1913] 1 Ch 9.

2 In *Smith v Cherrill* (1867) LR 4 Eq 390, an adopted child was held not to be within the consideration of marriage. However, under the Adoption Act 1976 s 39(1), the adopted child of a married couple is treated in law as if he had been born as a child of the marriage, whether or not he was in fact born after the marriage was solemnized: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 376. As to adopted children see further PARA 733 post; and as to adoption generally see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 323 et seq. The question whether a legitimated child is within the consideration of marriage has not been decided, although statutory rules cover the question whether, as a matter of construction, a legitimated child is entitled to take under a settlement: see PARA 732 post. In relation to dispositions made before 1976, for some purposes but not others a legitimated child is treated as a child of the marriage: see the cases cited in PARA 732 note 2 post.

3 *Nairn v Prowse* (1802) 6 Ves 752; *Parkes v White* (1805) 11 Ves 209 at 228; *A-G v Jacobs Smith* [1895] 2 QB 341, CA. See also *Harvey v Ashley* (1748) 3 Atk 607 at 610. The question who is within the consideration of marriage is different from the question whether a gift is made in consideration of marriage: *IRC v Rennell* [1964] AC 173, [1963] 1 All ER 803, HL (estate duty, now inheritance tax). As to gifts in consideration of marriage with regard to inheritance tax see INHERITANCE TAXATION vol 24 (Reissue) PARA 519.

4 *Price v Jenkins* (1876) 4 ChD 483 (revised on other grounds (1877) 5 ChD 619, CA); *Re Greer* (1877) IR 11 Eq 502; *Re Cameron and Wells* (1887) 37 ChD 32; *A-G v Jacobs Smith* [1895] 2 QB 341, CA; *Carruthers v Peake* (1911) 55 Sol Jo 291. *Newstead v Searles* (1737) 1 Atk 265; *Ithell v Beane* (1749) 1 Ves Sen 215; and *Gale v Gale* (1877) 6 ChD 144, cannot, having regard to *De Mestre v West* [1891] AC 264, PC, and *A-G v Jacobs Smith* supra, be relied on for the proposition that the case of children by a former marriage is an exception to the general rule.

5 *De Mestre v West* [1891] AC 264, PC, dissenting from *Clarke v Wright* (1861) 6 H & N 849, Ex Ch. As to illegitimate children generally see PARA 731 post. As to adopted and legitimated children see note 2 supra.

6 *Re Cullin's Estate* (1864) 14 I Ch R 506; *Wollaston v Tribe* (1869) LR 9 Eq 44; *De Mestre v West* [1891] AC 264, PC, explaining *Clayton v Earl of Wilton* (1813) 6 M & S 67n; *Re Kay's Settlement, Broadbent v Macnab* [1939] Ch 329, [1939] 1 All ER 245.

7 *Re D'Angibau, Andrews v Andrews* (1880) 15 ChD 228, CA; *Re Plumptre's Marriage Settlement, Underhill v Plumptre* [1910] 1 Ch 609; *Re Pryce, Nevill v Pryce* [1917] 1 Ch 234. Cf *Godsal v Webb* (1838) 2 Keen 99; *Gibbs v Grady* (1871) 41 LJ Ch 163.

8 *Staplehill v Bully* (1703) Prec Ch 224; *Reeves v Reeves* (1724) 9 Mod Rep 128 at 132; *Johnson v Legard* (1818) 3 Madd 283 (subsequent proceedings (1822) *Turn & R* 281); *Cormick v Trapaud* (1818) 6 Dow 60; *Cotterell v Homer* (1843) 13 Sim 506; *Stackpole v Stackpole* (1843) 4 Dr & War 320; *Wollaston v Tribe* (1869) LR 9 Eq 44. *Hale v Lamb* (1764) 2 Eden 292, cannot now be considered correct on this point.

9 *Sutton v Viscount Chetwynd* (1817) 3 Mer 249.

10 le under the Law of Property Act 1925 s 173: see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 868.

11 *Smith v Cherrill* (1867) LR 4 Eq 390.

12 *Sutton v Viscount Chetwynd* (1817) 3 Mer 249; *Godsal v Webb* (1838) 2 Keen 99; *Re D'Angibau, Andrews v Andrews* (1880) 15 ChD 228, CA; *Re Plumptre's Marriage Settlement, Underhill v Plumptre* [1910] 1 Ch 609; *Re Pryce, Nevill v Pryce* [1917] 1 Ch 234; *Re Kay's Settlement, Broadbent v Macnab* [1939] Ch 329, [1939] 1 All ER 245; *Re Cook's Settlement Trusts, Royal Exchange Assurance v Cook* [1965] Ch 902, [1964] 3 All ER 898. However, a volunteer is entitled to recover damages for breach of a covenant made with him in a deed to which he is a party: *Cannon v Hartley* [1949] Ch 213, [1949] 1 All ER 50. See also PARA 615 note 5 ante.

13 *Re Ralli's Will Trusts, Re Ralli's Marriage Settlement, Calvocoressi v Rodocanachi* [1964] Ch 288, [1963] 3 All ER 940.

14 *Kekewich v Manning* (1851) 1 De GM & G 176; *Paul v Paul* (1882) 20 ChD 742, CA; *Re Flavell, Murray v Flavell* (1883) 25 ChD 89, CA; *Osborn v Bellman* (1860) 6 Jur NS 1325. Cf *Ayerst v Jenkins* (1873) LR 16 Eq 275. See also EQUITY vol 16(2) (Reissue) PARA 609; GIFTS vol 52 (2009) PARA 267; TRUSTS vol 48 (2007 Reissue) PARA 667; and PARA 615 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(5) CONSIDERATION/662. Extension to parties not within the consideration.

662. Extension to parties not within the consideration.

If the order of the limitations¹ in a settlement is such that the limitations which are not within the marriage consideration are covered by those that are, so that those which are within the marriage consideration cannot take effect in the form and manner provided by the instrument without also giving effect to the others, then the marriage consideration extends to all the limitations².

Further, where in a marriage settlement one of the parties to the marriage settles property and the settlement contains limitations in favour of the other party, or his or her issue, or even his or her collateral relations, it may be presumed that the last-mentioned party stipulated, as part of the marriage bargain, for their insertion in the settlement, and so may properly be regarded as having by the marriage purchased them on behalf of those who are intended to be benefited by them. However, an intended wife cannot be inferred to have stipulated on behalf of the relations of the intended husband, nor the intended husband on behalf of the relations of the intended wife³; and a party settling property will not be considered as having purchased any interest in that property limited to that party⁴.

1 As to limitations in settlements see PARA 715 et seq post.

2 *Newstead v Searles* (1737) 1 Atk 265; *Clayton v Earl of Wilton* (1813) 6 M & S 67n, as explained by *Mackie v Herbertson* (1884) 9 App Cas 303 at 336, HL, and *De Mestre v West* [1891] AC 264, PC. See also *Re Cullin's Estate* (1864) 14 I Ch R 506; *Re Sheridan's Estate* (1878) 1 LR Ir 54. These cases all arose under 27 Eliz 1 c 4 (Fraudulent Conveyances) (1584-5), replaced by the Law of Property Act 1925 ss 172 (repealed) and 173 (see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 868 et seq). However, the principle would appear to be of general application.

3 *Heap v Tonge* (1851) 9 Hare 90 at 104; *Ford v Stuart* (1852) 15 Beav 493 at 500; *Clarke v Wright* (1861) 6 H & N 849, Ex Ch.

4 *Barham v Earl of Clarendon* (1852) 10 Hare 126; *Clarke v Wright* (1861) 6 H & N 849, Ex Ch; *Re Brown's Estate* (1862) 13 I Ch R 283. Cf *Dilkes v Broadmead* (1860) 2 De GF & J 566, where a limitation to the wife of her own property for her life to her separate use without power of anticipation was held not to be a voluntary settlement for her benefit, inasmuch as the husband derived a benefit from the manner in which the property was settled.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(5) CONSIDERATION/663. Effect of concurrence of third persons.

663. Effect of concurrence of third persons.

If persons other than the intended husband and wife, being persons whose concurrence is necessary to give effect to the settlement, join as parties to it, their concurrence is sufficient to constitute a consideration for trusts in favour of other branches of the family or of strangers¹.

If a person agrees with another to make a provision for a volunteer in consideration of the other doing the like, the contract is not voluntary², and, if it is enforced by either party, the volunteer gets the benefit of it³, although the volunteer could not enforce it against either of the contracting parties, since they are at liberty either to vary or to abandon their contract⁴.

1 *Jenkins v Keymis* (1664) 1 Lev 150; *Jenkins v Keymes* (1668) 1 Lev 237; *Osgood v Strode* (1724) 2 P Wms 245 at 256; *Goring v Nash* (1774) 3 Atk 186; *Stephens v Trueman* (1748) 1 Ves Sen 73; *Roe d Hamerton v Mitton* (1767) 2 Wils 356; *Pulvertoft v Pulvertoft* (1811) 18 Ves 84 at 92. These decisions are not affected by *Mackie v Herbertson* (1884) 9 App Cas 303, HL, and *De Mestre v West* [1891] AC 264, PC (see PARA 661 notes 4-5 ante); *A-G v Baron Rathdonnell* [1896] WN 141 at 143.

2 *Bentley v Mackay* (1862) 31 Beav 143; on appeal 4 De GF & J 279.

3 *Davenport v Bishopp* (1843) 2 Y & C Ch Cas 451; affd (1846) 1 Ph 698. See also *Beswick v Beswick* [1968] AC 58, [1967] 2 All ER 1197, HL.

4 *Hill v Gomme* (1839) 5 My & Cr 250; *Re Anstis, Chetwynd v Morgan, Morgan v Chetwynd* (1886) 31 ChD 596, CA.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(6) TRUSTEES' DUTIES OF ADMINISTRATION/664. Duties of trustees in general.

(6) TRUSTEES' DUTIES OF ADMINISTRATION

664. Duties of trustees in general.

It is the duty of the trustees of a settlement to make themselves acquainted with the terms of the trust, to obtain possession of all trust property which should be under their control, to comply strictly with the provisions of the settlement, to keep proper accounts, to exercise in good faith any discretion conferred on them either by the settlement or by statute, to act impartially between the beneficiaries and, in the case of a settlement by deed, to inform the beneficiaries of their interest under the settlement¹.

1 See *Hawkesley v May*[1956] 1 QB 304, [1955] 3 All ER 353. As to the duties of trustees generally see TRUSTS vol 48 (2007 Reissue) PARA 947 et seq. As to delegation by trustees see the Trustee Act 1925 s 25 (as amended); the Powers of Attorney Act 1971 s 9; the Trusts of Land and Appointment of Trustees Act 1996 s 9; and TRUSTS vol 48 (2007 Reissue) PARA 984 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(6) TRUSTEES' DUTIES OF ADMINISTRATION/665. Trustees' powers of management in relation to land.

665. Trustees' powers of management in relation to land.

The ambit of trustees' powers of management in relation to land depends upon whether the trust is a settlement within the Settled Land Act 1925¹ or whether it is a trust of land².

Trustees of land have in general the powers of an absolute owner³. Additionally, the trustees have the following express powers:

- 5 (1) a power to convey the land to the beneficiaries in certain circumstances⁴;
- 6 (2) a power to purchase land⁵;
- 7 (3) an express power of partition⁶; and
- 8 (4) a power to delegate their duties by power of attorney to any beneficiary of full age and beneficially entitled to an interest in possession in the land⁷.

All these powers, except the power to delegate, are subject to any provision in the disposition⁸ by which the trust was created to the contrary⁹. Further, and unless provision to the contrary is made in the disposition, the trustees must, in the exercise of their powers so far as practicable, consult with the beneficiaries of full age and beneficially entitled to an interest in possession in the land and, generally, give effect to their wishes¹⁰. The disposition may also provide for the consent of certain persons to the exercise of these powers¹¹.

The trustees of a strict settlement have the powers set out in the Settled Land Act 1925¹². As long as any child¹³ is entitled to a beneficial interest in possession affecting land, the trustees¹⁴ may¹⁵ enter into and continue in possession of the land on the child's behalf¹⁶. In such a case the trustees must manage or superintend the management of the land¹⁷, with full power:

- 9 (a) to fell timber or cut underwood from time to time in the usual course for sale, or for repairs or otherwise¹⁸;
- 10 (b) to erect, pull down, rebuild and repair houses and other buildings and erections¹⁹;
- 11 (c) to continue the workings of mines, minerals and quarries which have usually been worked²⁰;
- 12 (d) to drain or otherwise improve the land or any part of it²¹;
- 13 (e) to insure against loss by fire²²;
- 14 (f) to make allowances to and arrangements with tenants and others²³;
- 15 (g) to determine tenancies and to accept surrenders of leases and tenancies²⁴; and
- 16 (h) generally to deal with the land in a proper and due course of management²⁵.

However, where the child is impeachable for waste, the trustees may not commit waste, and may cut the timber on the same terms only, and subject to the same restrictions on and subject to which the child could, if of full age, cut the same²⁶.

These powers are also available where any person is contingently entitled to land under an instrument coming into operation on or after 1 January 1926 and before 1 January 1997²⁷, subject to any prior interests or charges affecting the land, until his interest vests or, if his interest vests during minority, until he attains the age of 18 years²⁸.

- 1 See PARA 675 post.
- 2 See PARAS 609 ante, 676-677 post.
- 3 See the Trusts of Land and Appointment of Trustees Act 1996 s 6(1); and TRUSTS vol 48 (2007 Reissue) PARA 1035. The more complex powers of trustees for sale set out in the Law of Property Act 1925 ss 28, 29 (repealed) have been abolished: see the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4.
- 4 See *ibid* s 6(2); and TRUSTS vol 48 (2007 Reissue) PARA 1035.
- 5 See *ibid* s 6(3); and TRUSTS vol 48 (2007 Reissue) PARA 1035.
- 6 See *ibid* s 7; and TRUSTS vol 48 (2007 Reissue) PARA 1046.
- 7 See *ibid* s 9; and TRUSTS vol 48 (2007 Reissue) PARA 987.
- 8 'Disposition' includes a conveyance and also a devise, bequest, or an appointment of property contained in a will: Law of Property Act 1925 s 205(1)(ii); definition applied by the Trusts of Land and Appointment of Trustees Act 1996 s 23(2). The relevant document will usually be the transfer by the settlor to the trustees, but the better view is that the definition extends to a declaration of trust by a beneficial owner.
- 9 See *ibid* s 8; and TRUSTS vol 48 (2007 Reissue) PARA 1035.
- 10 See *ibid* s 11; and TRUSTS vol 48 (2007 Reissue) PARA 1036. Additionally, the trustees are directed to have regard to the rights of the beneficiaries when exercising the powers conferred by s 6 (see the text and notes 3-5 supra): see s 6(5); and TRUSTS vol 48 (2007 Reissue) PARA 1035.
- 11 See *ibid* s 10; and TRUSTS vol 48 (2007 Reissue) PARA 1036.
- 12 See further PARA 750 et seq post.
- 13 The Settled Land Act 1925 refers to infants but 'child' has been substituted throughout this title: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 3.
- 14 If the trustees appointed for this purpose by the settlement, or if there are none so appointed, then the trustees of the settlement, unless the settlement or the order of the court by which they or their predecessors in the office were appointed to be such trustees expressly provides to the contrary, or if there are none, then any persons appointed as trustees for this purpose by the court on the application of the child's guardian or next friend: see the Settled Land Act 1925 s 102(1). For the meaning of 'trustees of the settlement' see PARA 750 note 1 post. As to the age of majority see PARA 605 note 1 ante.
- 15 The trustees have a discretion whether to enter: *Re Lethbridge, Couldwell v Lethbridge* [1917] WN 243.
- 16 See the Settled Land Act 1925 s 102(1), which has effect subject to an express appointment by the settlement, or the court, of trustees for the purposes of s 102 (as amended): s 102(4). Section 102 (as amended) applies only if and as far as a contrary intention is not expressed in the instrument, if any, under which the child's interest arises, and has effect subject to the terms of that instrument and the provisions contained in it: see s 102(6); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 55.
- 17 *Ibid* s 102(2).
- 18 *Ibid* s 102(2)(a).
- 19 *Ibid* s 102(2)(b).
- 20 *Ibid* s 102(2)(c).
- 21 *Ibid* s 102(2)(d).
- 22 *Ibid* s 102(2)(e). Money received on insurances effected by trustees is capital money: see the Trustee Act 1925 s 20 (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1048. Money received under insurances effected under the Conveyancing Act 1881 s 42 (repealed by the Law of Property Act 1925, except so far as it relates to instruments in operation before 1926, subject to the right to have the money applied in rebuilding under the Fires Prevention (Metropolis) Act 1774), belongs to the child: *Re Quicke's Trusts, Poltimore v Quicke* [1908] 1 Ch 887.
- 23 Settled Land Act 1925 s 102(2)(f).

24 Ibid s 102(2)(g).

25 Ibid s 102(2)(h).

26 See *ibid* s 102(2). As to waste see PARA 986 et seq post.

27 Ie after the coming into force of the Settled Land Act 1925 and before the coming into force of the Trusts of Land and Appointment of Trustees Act 1996: see PARA 676 post.

28 See the Settled Land Act 1925 s 102(5) (amended by the Family Law Reform Act 1969 s 1(3), Sch 1); and the Trusts of Land and Appointment of Trustees Act 1996 s 2(1) (see PARAS 676-677 post).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(6) TRUSTEES' DUTIES OF ADMINISTRATION/666. Expenses of management and keeping down charges.

666. Expenses of management and keeping down charges.

Where the trustees of a settlement¹ under the Settled Land Act 1925 enter into possession², they may pay from time to time, out of the income of the land, including the produce of the sale of timber and underwood, the expenses incurred in the management, or in the exercise of any power conferred on them in relation to the land³, and all outgoings not payable by any tenant or other person, and must keep down any annual sum, and the interest of any principal sum, charged on the land⁴.

1 For the meaning of 'trustees of the settlement' see PARA 750 note 1 post.

2 As to the power for the trustees to enter see PARA 665 ante.

3 Ie any power conferred on them by the Settled Land Act 1925 s 102 (as amended) (see PARA 665 ante) or otherwise: see s 102(3).

4 Ibid s 102(3). As to payment for repairs as between capital and income see PARA 963 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(6) TRUSTEES' DUTIES OF ADMINISTRATION/667. Powers of maintenance and advancement.

667. Powers of maintenance and advancement.

Statutory powers enable trustees of a settlement at their sole discretion to apply income arising from it for the maintenance, education or benefit of a child, subject to any contrary intention expressed in the trust instrument¹. It is usual in settlements to rely on these statutory powers, although it is also usual to supplement them with express powers of accumulation and maintenance². Express powers should be inserted in any event if the interests provided are of such a nature that the statutory powers do not apply³, or if it is desired to vary the statutory powers⁴. For certain types of trust it is important to exclude the statutory powers⁵.

It has, moreover, long been recognised that trustees of a settlement may be expressly authorised by the trust instrument to raise sums out of the capital of the personal estate in which a beneficiary has an interest, for placing him out in life or otherwise for a special benefit to him as distinct from ordinary maintenance and education⁶. In addition, in the case of trusts constituted or created after 1925, a statutory power of advancement⁷ is conferred on trustees which, subject to certain limitations⁸, enables them at any time to apply capital money in such manner as they may in their absolute discretion think fit for the advancement or benefit of any person entitled absolutely or contingently to the capital or any share of it⁹.

1 See the Trustee Act 1925 s 31 (as amended); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 63 et seq. As to the age of majority see PARA 605 note 1 ante.

2 As to powers of accumulation and maintenance see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 58 et seq.

3 For example, an express power should be included if the settlor wishes the trustees to have powers of accumulation in relation to the income of beneficiaries of full age: see further TRUSTS vol 48 (2007 Reissue) PARA 971 et seq.

4 As to express powers of maintenance see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 58.

5 The exclusion of the Trustee Act 1931 s 31 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 63 et seq) is important if it is desired to give an interest in possession to a beneficiary under the age of majority for the purposes of the Inheritance Tax Act 1984: see INHERITANCE TAXATION vol 24 (Reissue) PARA 507.

6 This is usually called a power of advancement. As to express powers of advancement see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 73 et seq.

7 The power arises under the Trustee Act 1925 s 32 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 76). It is excluded if a contrary intention is expressed in the trust instrument: see s 69(2); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 76. See also *IRC v Bernstein* [1961] Ch 399, [1961] 1 All ER 320, CA.

8 As to these limitations see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 77.

9 See the Trustee Act 1925 s 32 (as amended) (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 76); and PARA 626 ante. The statutory power of advancement under s 32 (as amended) does not apply to capital money arising under the Settled Land Act 1925 (as to which see PARA 795 post): see the Trustee Act 1925 s 32(2) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 3(8)). See, however, *Re Collard's Will Trusts, Lloyds Bank Ltd v Rees* [1961] Ch 293, [1961] 1 All ER 821, where settled land was nevertheless validly advanced. An express power of advancement should be inserted in instruments if it is desired to vary the statutory power, or if the statutory power does not apply, or if the settlement is not to be governed by English law. It is usual to vary the statutory power in a settlement, so that it extends over the

whole rather than one half of a beneficiary's presumptive or vested entitlement in the trust fund: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 79.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(6) TRUSTEES' DUTIES OF ADMINISTRATION/668. Duty to invest.

668. Duty to invest.

A settlement, whether created by deed or will, usually contains a clause specifying what investments of the trust funds may lawfully be made by the trustees¹. This clause primarily determines the powers of the trustees of the settlement in making investments, but, unless expressly forbidden by the settlement², they have the extensive powers of investment which are now conferred on them by statute³. If the investment clause purports still further to enlarge these powers, it should be construed strictly for the protection of the trustees and remaindermen⁴.

1 See generally TRUSTS vol 48 (2007 Reissue) PARA 1005 et seq.

2 A direction that the trustees are to invest in a particular way is not an express prohibition: *Re Maire, Maire v De La Batut* (1905) 49 Sol Jo 383; *Re Burke, Burke v Burke* [1908] 2 Ch 248; *Re Warren, Public Trustee v Fletcher* [1939] Ch 684, [1939] 2 All ER 599.

3 See by the Trustee Act 1925 ss 2, 5-11 (as amended); the Trustee Investments Act 1961; and the Trusts of Land and Appointment of Trustees Act 1996 s 6 (in relation to trusts of land). As to these powers and the powers and duties of trustees to invest see TRUSTS vol 48 (2007 Reissue) PARA 1019 et seq.

4 *Re Maryon-Wilson's Estate* [1912] 1 Ch 55, CA. As regards trustee investments and the construction of investment clauses see TRUSTS vol 48 (2007 Reissue) PARA 1005 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(6) TRUSTEES' DUTIES OF ADMINISTRATION/669. Duty in respect of policies and choses in action.

669. Duty in respect of policies and choses in action.

If a settlement contains a covenant by any person to pay the premiums on an insurance policy which forms part of the subject matter of the settlement, it is the duty of the trustees of the settlement to take all necessary steps to enforce payment of the premiums by the covenantor, although it is usual to restrict their responsibility by the instrument creating the trust¹. However, the trustees incur no liability if their efforts are unsuccessful, nor are they bound to take any steps to enforce payment if by reason of the covenantor's poverty there is ground for believing that such steps would be ineffectual². If there are no funds properly applicable to the keeping up of the policy, it is the trustees' duty to do what they can to protect the policy and advance or obtain money for the purpose of paying the premiums³. In such case the trustees, or any person advancing money for the purpose at their request, will be entitled to a lien on the policy for the amount so advanced, together with interest⁴. Where no funds are available to keep up a policy, it may be ordered to be surrendered⁵ or sold, and the trustees may be reimbursed out of the proceeds the amount of premiums paid by them⁶. If, however, the beneficiary supplies funds, or if, by duly performing their trust, the trustees ought to be in possession of funds applicable for the purpose, then the trustees acquire no lien on the policy, and cannot confer one on another person who provides the necessary funds⁷. Trustees should insist on having the policy and assignment handed over to them for custody even though the possession may not confer on them any legal estate or advantage⁸.

Where the subject of the settlement is an insurance policy or any other chose in action, the trustees should see that their title is perfected by giving the necessary notices⁹.

If a chose in action which is the subject of the settlement is capable of reduction into possession, it is the trustees' duty to reduce it into possession without unnecessary delay, and if they fail to do so they will be guilty of a breach of trust unless they can prove that even if speedy steps had been taken the money could not have been recovered¹⁰.

1 As to a life policy taken out by a husband for the benefit of his wife and children see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 511; INSURANCE vol 25 (2003 Reissue) PARA 558. As to life insurance generally see INSURANCE vol 25 (2003 Reissue) PARA 525 et seq.

2 *Ball v Ball* (1847) 11 I Eq R 370; *Clack v Holland* (1854) 19 Beav 262; *Hobday v Peters (No 3)* (1860) 28 Beav 603.

3 *Clack v Holland* (1854) 19 Beav 262 at 276.

4 *Clack v Holland* (1854) 19 Beav 262. Cf *Shearman v British Empire Mutual Life Assurance Co* (1872) LR 14 Eq 4; *Gill v Downing* (1874) LR 17 Eq 316. As to liens on policies see INSURANCE vol 25 (2003 Reissue) PARA 560. The traditional rate of interest is 4% per annum, but cf para 945 note 5 post.

5 *Beresford v Beresford* (1857) 23 Beav 292. It is desirable in settlements of policies to insert express powers enabling the trustees to surrender the policy.

6 *Hill v Trenery* (1856) 23 Beav 16.

7 *Clack v Holland* (1854) 19 Beav 262.

8 See *Meux v Bell* (1841) 1 Hare 73 at 89.

9 As to these notices see CHOSES IN ACTION vol 13 (2009) PARA 80 et seq.

10 *Styles v Guy* (1849) 1 Mac & G 422; *Wiles v Gresham* (1854) 5 De GM & G 770; *Grove v Price* (1858) 26 Beav 103; *Re Brogden, Billing v Brogden* (1888) 38 ChD 546, CA. As to the duty of trustees to get in outstanding property see TRUSTS vol 48 (2007 Reissue) PARA 959-960.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(7) UNAUTHORISED TRANSACTIONS EFFECTED UNDER COURT ORDERS/670. Jurisdiction of the court.

(7) UNAUTHORISED TRANSACTIONS EFFECTED UNDER COURT ORDERS

670. Jurisdiction of the court.

It is not the function of the court in exercise of its inherent jurisdiction¹ to alter a trust because alteration is thought to be advantageous², and, in general, the court has no jurisdiction to sanction acts being done by trustees which are not, on the face of the trust instrument, authorised by its terms³. Within specified limits, however, the court has inherent jurisdiction to authorise transactions that are not authorised, or may not be authorised, by the trust⁴. Such transactions may:

- 17 (1) change the nature of property to which a child is absolutely entitled⁵;
- 18 (2) provide maintenance out of trust income for a child and, but rarely, for an adult beneficiary, even if the income is directed to be accumulated or applied in reduction of incumbrances⁶;
- 19 (3) sanction the compromise of disputed rights⁷ notwithstanding that some of the beneficiaries are children or are unborn⁸; and
- 20 (4) authorise by way of salvage some unauthorised transaction to be carried out⁹.

In addition to the inherent jurisdiction of the court, certain special powers of authorising transactions to be carried out by tenants for life¹⁰ or trustees¹¹, or of approving arrangements varying trusts¹², have been conferred on the court by statute. Moreover there is statutory power, for the purpose of enabling a child's property to be applied for his maintenance, education or benefit, to make vesting orders or appoint persons to convey the property¹³.

1 As to this inherent jurisdiction see generally TRUSTS vol 48 (2007 Reissue) PARA 1060. Special statutory jurisdiction, overriding to some extent the principle stated in the text, has been conferred by the Variation of Trusts Act 1958. As to this jurisdiction see TRUSTS vol 48 (2007 Reissue) PARA 1062 et seq; and PARA 674 post.

2 See *Chapman v Chapman*[1954] AC 429 at 446, [1954] 1 All ER 798 at 802, HL, per Viscount Simonds LC, after citing with approval a proposition stated by Farwell J in *Re Walker, Walker v Duncombe*[1901] 1 Ch 879 at 885.

3 See *Re New, Re Leavers, Re Morley*[1901] 2 Ch 534 at 544, CA, per Romer LJ, cited with approval by Lord Morton of Henryton in *Chapman v Chapman*[1954] AC 429 at 452, [1954] 1 All ER 798 at 808, HL.

4 See *Chapman v Chapman*[1954] AC 429 at 445, [1954] 1 All ER 798 at 802, HL, per Lord Simonds LC, at 451 and 807-808 per Lord Morton of Henryton, and at 469 and 818 per Lord Asquith of Bishopstone.

5 See *Chapman v Chapman*[1954] AC 429 at 452, [1954] 1 All ER 798 at 808, HL, per Lord Morton of Henryton; and TRUSTS vol 48 (2007 Reissue) PARA 1060; CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1422. A like jurisdiction was exercised in the case of persons suffering from mental disorders: see *Chapman v Chapman* supra at 452 and 808 per Lord Morton of Henryton. In the case of children's property there was a distinction between realty and personality: see eg *Re Heyworth's Settlements*[1956] Ch 364 at 371, [1956] 2 All ER 21 at 24 per Upjohn J. As to the age of majority see PARA 605 note 1 ante.

6 See *Chapman v Chapman*[1954] AC 429 at 455, [1954] 1 All ER 798 at 810, HL, per Lord Morton of Henryton; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1422. For a further statutory power in relation to property of a child see PARA 673 post.

7 *Chapman v Chapman*[1954] AC 429 at 461, [1954] 1 All ER 798 at 814, HL, per Lord Morton of Henryton; *Re Lord Hylton's Settlement, Barclays Bank Ltd v Jolliffe*[1954] 2 All ER 647n, [1954] 1 WLR 1055, CA; *Re Powell-Cotton's Resettlement, Henniker-Major v Powell-Cotton*[1956] 1 All ER 60, [1956] 1 WLR 23, CA.

8 See *Re Trenchard, Trenchard v Trenchard*[1902] 1 Ch 378; and CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1422. However, as to this decision see *Chapman v Chapman*[1954] AC 429 at 446, [1954] 1 All ER 798 at 803, HL, per Lord Simonds LC, and at 464 and 815 per Lord Morton of Henryton.

9 *Conway v Fenton*(1888) 40 ChD 512; *Re Waldegrave, Earl Waldegrave v Earl Selborne* (1899) 81 LT 632. The inherent jurisdiction to authorise a transaction by way of salvage was exercised with great caution and only in a case which amounted to actual salvage: *Re De Teissier's Settled Estates, Re De Teissier's Trusts, De Teissier v De Teissier*[1893] 1 Ch 153; *Re New, Re Leavers, Re Morley*[1901] 2 Ch 534, CA; *Chapman v Chapman*[1954] AC 429 at 452, [1954] 1 All ER 798 at 808, HL, per Lord Morton of Henryton. This jurisdiction has been largely superseded by the wider statutory powers conferred on the court: see the text and notes 10-13 infra. In exercising this jurisdiction in a case concerning settled land, these statutory powers, whether or not they exclude the inherent jurisdiction, afford a guide to the court in arriving at a proper conclusion concerning the exercise of this jurisdiction: see *Re De Teissier's Settled Estates* supra at 165; *Re Willis, Willis v Willis*[1902] 1 Ch 15 at 21-22, CA. See further TRUSTS vol 48 (2007 Reissue) PARA 1060.

10 See the Settled Land Act 1925 s 64 (as amended); and PARA 671 post.

11 See the Trustee Act 1925 s 57; and PARA 672 post. See also TRUSTS vol 48 (2007 Reissue) PARA 1061.

12 See the Variation of Trusts Act 1958 s 1 (as amended) (see TRUSTS vol 48 (2007 Reissue) PARAS 1062-1063); and PARA 679 post.

13 See PARA 673 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(7) UNAUTHORISED TRANSACTIONS EFFECTED UNDER COURT ORDERS/671. Court's power to order transactions affecting settled land.

671. Court's power to order transactions affecting settled land.

If there is any transaction¹ affecting or concerning settled land, or any part of settled land, or any other land², which is not a transaction authorised by the Settled Land Act 1925 or by the settlement, and which, in the opinion of the court³, would be for the benefit of the settled land or any part of it, or the persons interested under the settlement, and if it is one which could have been validly effected⁴ by an absolute owner, the court has jurisdiction to authorise the tenant for life⁵ to effect the transaction⁶.

This jurisdiction includes power to make an order authorising any expense of action taken or proposed in or for the management⁷ of settled land to be treated as a capital outgoing, notwithstanding that in other circumstances that expense could not properly have been so treated⁸. Before making such an order the court must be satisfied that the action taken or proposed was or would be for the benefit of the persons entitled under the settlement generally⁹, and either (1) that the available income from all sources of a person who, as being beneficially entitled to possession or receipt of the rents and profits of the land or to reside in a house comprised in it might otherwise have been expected to bear the expense of the action taken or proposed, has been so reduced as to render him unable to bear its expense or unable to bear it without undue hardship¹⁰; or (2) in a case in which there is no such person, that the income available for meeting that expense has become insufficient¹¹.

In determining whether to make an order the court must have regard to all the circumstances of the case, including (a) the extent of the obligations, whether legally enforceable or not and whether or not relating to the land, of the person referred to¹²; (b) the extent to which other persons entitled under the settlement are likely to benefit from the action taken or proposed or from the relief which would accrue to that person from the making of the order; and (c) the extent to which the making of the order would be likely to involve a loss to any other person so entitled without his receiving any corresponding benefit¹³.

1 'Transaction' includes any sale, exchange, assurance, grant, lease, surrender, reconveyance, release, reservation, or other disposition, and any purchase or other acquisition, and any covenant, contract or option, and any application of capital money, and any compromise or other dealing or arrangement: see the Settled Land Act 1925 s 64(2) (amended by the Settled Land and Trustee Acts (Court's General Powers) Act 1943 s 2; and the Statute Law (Repeals) Act 1969). 'Transaction' is not limited to acts of an administrative character: *Re Downshire Settled Estates, Marquess of Downshire v Royal Bank of Scotland, Re Chapman's Settlement Trusts, Chapman v Chapman, Re Blackwell's Settlement Trusts, Blackwell v Blackwell* [1953] Ch 218, [1953] 1 All ER 103, CA; affd in part on another point sub nom *Chapman v Chapman* [1954] AC 429, [1954] 1 All ER 798, HL. The following matters have been held to be transactions within the definition: (1) raising money to pay debts incurred by the tenant for life (*Re White-Popham Settled Estates* [1936] Ch 725, [1936] 2 All ER 1486, CA); (2) raising money to enable the tenant for life to continue to live in the mansion house (*Re Scarisbrick Re-settlement Estates* [1944] Ch 229, [1944] 1 All ER 404); (3) raising money for the purchase of furniture and chattels to equip the mansion house (*Re Earl of Mount Edgcumbe* [1950] Ch 615, [1950] 2 All ER 242); or (4) payment of capital to the tenant for life in return for a provision for compensating remaindermen (*Re Simmons, Simmons v Public Trustee* [1956] Ch 125, [1955] 3 All ER 818). The court's power in the Settled Land Act 1925 s 64 (as amended) extends to authorising a maintenance fund trust within the Inheritance Tax Act 1984 s 27, Sch 4 (as amended) (see INHERITANCE TAXATION vol 24 (Reissue) PARA 548 et seq): see *Raikes v Lygon* [1988] 1 All ER 884, [1988] 1 WLR 281.

2 References to land include references to restrictions and burdens affecting land: see the Settled Land Act 1925 s 64(2) (as amended: see note 1 supra).

3 See PARA 792 post.

4 'Effect' has the meaning appropriate to the particular transaction: Settled Land Act 1925 s 64(2) (as amended: see note 1 supra).

5 'Tenant for life' includes a person (not being a statutory owner) (see PARA 766 post) who has the powers of a tenant for life under the Settled Land Act 1925, and also (where the context requires) one or two or more persons who together constitute the tenant for life: s 117(1)(xviii). The court's powers under s 64 (as amended) are in certain circumstances exercisable in the case of a trust of land: see the Settled Land and Trustee Acts (Court's General Powers) Act 1943 s 1 (as amended); and the text and notes 7-13 infra).

6 Settled Land Act 1925 s 64(1). The court's powers under s 64 (as amended) are not limited by the Variation of Trusts Act 1958 s 1: see s 1(6) (as amended) (see TRUSTS vol 48 (2007 Reissue) PARA 1061); and PARA 674 post. The court's jurisdiction under the Settled Land Act 1925 s 64 (as amended), is more ample than its jurisdiction under the Trustee Act 1925 s 57 (see PARA 672 post; and TRUSTS vol 48 (2007 Reissue) PARA 1061): *Re Downshire Settled Estates, Marquess of Downshire v Royal Bank of Scotland, Re Chapman's Settlement Trusts, Chapman v Chapman, Re Blackwell's Settlement Trusts, Blackwell v Blackwell* [1953] Ch 218, [1953] 1 All ER 103, CA; affd in part on another point sub nom *Chapman v Chapman* [1954] AC 429, [1954] 1 All ER 798, HL.

7 'Management' includes all the acts referred to in the Settled Land Act 1925 s 102(2) (see PARA 665 ante); and references to expense of management include references to the expense of the employment of a solicitor, accountant, surveyor or other person in an advisory or supervisory capacity: see the Settled Land and Trustee Acts (Court's General Powers) Act 1943 s 1(5) (amended by the Emergency Laws (Miscellaneous Provisions) Act 1953 ss 9, 14, Sch 3). Although the Act authorises the expenditure of capital money only in or for the management of settled land, it does not restrict the court's jurisdiction under the Settled Land Act 1925 s 64 (as amended): *Re Scarisbrick Re-settlement Estates* [1944] Ch 229, [1944] 1 All ER 404.

8 See the Settled Land and Trustee Acts (Court's General Powers) Act 1943 s 1(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 8). As to payments out of capital money see PARA 808 post.

9 Settled Land and Trustee Acts (Court's General Powers) Act 1943 s 1(2)(a).

10 Ibid s 1(2)(b) (amended by the Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 3).

11 Settled Land and Trustee Acts (Court's General Powers) Act 1943 s 1(2)(c) (amended by the Emergency Laws (Miscellaneous Provisions) Act 1953 Sch 3).

12 Ie referred to in head (1) in the text: see the Settled Land and Trustee Acts (Court's General Powers) Act 1943 s 1(3).

13 Ibid s 1(3). Such an order may be made notwithstanding that the action in question was taken, or the expense of it was discharged, before the application for the order, and the court may direct such adjustments of accounts and such repayments to be made as may appear to the court to be requisite for giving full effect to the purposes of any such order: see s 1(4).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(7) UNAUTHORISED TRANSACTIONS EFFECTED UNDER COURT ORDERS/672. Court's power to authorise dealings with any trust property.

672. Court's power to authorise dealings with any trust property.

If in the management or administration of any property vested in trustees, any sale, lease, mortgage, surrender, release or other disposition, or any purchase, investment, acquisition, expenditure or other transaction is, in the court's opinion, expedient, but cannot be effected by reason of the absence of any power for that purpose vested in the trustees by the trust instrument, if any, or by law, the court may by order confer upon the trustees, either generally or in any particular instance, the necessary power for the purpose¹.

1 See the Trustee Act 1925 s 57(1); and TRUSTS vol 48 (2007 Reissue) PARA 1061. These powers of the court have been extended by the Settled Land and Trustee Acts (Court's General Powers) Act 1943 s 1 (as amended) (see PARA 671 ante), to the same extent as have its powers under the Settled Land Act 1925 s 64 (as amended); see PARA 671 ante. The court's powers under the Trustee Act 1925 s 57 are not limited by the Variation of Trusts Act 1958 (see PARA 674 post; and TRUSTS vol 48 (2007 Reissue) PARA 1062 et seq): see s 1(6) (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1061. For an example of the application of the enactment to a settlement see *Re Beale's Settlement Trusts, Huggins v Beale* [1932] 2 Ch 15 (authorisation of sale notwithstanding individual's consent refused).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(7) UNAUTHORISED TRANSACTIONS EFFECTED UNDER COURT ORDERS/673. Orders affecting child's property.

673. Orders affecting child's property.

Where a child is beneficially entitled to any property, then, with a view to the application of its capital or income for the maintenance, education or benefit of the child, the court may make an order appointing a person to convey such property, or, in the case of stock or a thing in action, make a vesting order¹.

1 See the Trustee Act 1925 s 53; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 71. As to the age of majority see PARA 605 note 1 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/1. NATURE AND VALIDITY OF SETTLEMENTS/(7) UNAUTHORISED TRANSACTIONS EFFECTED UNDER COURT ORDERS/674. Approval of arrangements varying trusts.

674. Approval of arrangements varying trusts.

Where real or personal property is held on trusts arising under a settlement, then, if it thinks fit, the court may approve on behalf of certain specified persons any arrangement varying or revoking all or any of the trusts or enlarging the trustees' powers of managing or administering any of the property subject to the trusts¹. These persons are:

- 21 (1) any person having an interest, directly or indirectly, whether vested or contingent, under the trusts who by reason of being a child or other incapacity is incapable of assenting²;
- 22 (2) any person, whether ascertained or not, who may become entitled, directly or indirectly, to such an interest as being at a future date or on the happening of a future event a person of any specified description or a member of any specified class of persons³;
- 23 (3) any person unborn⁴; or
- 24 (4) any person in respect of any discretionary interest⁵ of his under protective trusts⁶ where the interest of the principal beneficiary⁷ has not failed or determined⁸.

The power does not extend to trusts affecting property settled by Act of Parliament⁹.

1 See the Variation of Trusts Act 1958 s 1(1); and TRUSTS vol 48 (2007 Reissue) PARA 1062. The Act applies whether the trusts arose before or after the passing of the Act: see s 1(1); and TRUSTS vol 48 (2007 Reissue) PARA 1062.

2 See ibid s 1(1)(a); and TRUSTS vol 48 (2007 Reissue) PARA 1063.

3 See ibid s 1(1)(b); and TRUSTS vol 48 (2007 Reissue) PARA 1063. This does not include any person who would be of that description, or a member of that class, if that date had fallen or that event had happened at the date of the application to the court: see s 1(1)(b); and TRUSTS vol 48 (2007 Reissue) PARA 1063.

4 See ibid s 1(1)(c); and TRUSTS vol 48 (2007 Reissue) PARA 1063.

5 'Discretionary interest' means an interest arising under the trust specified in the Trustee Act 1925 s 33(1) (ii) (see PARA 917 post), or any like trust: see the Variation of Trusts Act 1958 s 1(2).

6 'Protective trusts' means the trusts specified in the Trustee Act 1925 s 33(1)(i), (ii) (see PARA 917 post), or any like trusts: see the Variation of Trusts Act 1958 s 1(2).

7 'The principal beneficiary' has the same meaning as in the Trustee Act 1925 s 33(1) (see PARA 917 post): see the Variation of Trusts Act 1958 s 1(2).

8 See ibid s 1(1)(d); and TRUSTS vol 48 (2007 Reissue) PARA 1063. Except under s 1(1)(d), the court must not approve an arrangement on behalf of any person unless its being carried out would be for the benefit of that person: see s 1(1) proviso.

9 See ibid s 1(5).

UPDATE

674 Approval of arrangements varying trusts

NOTE 1--The word 'arrangement' is used in the widest possible sense so as to cover any proposal that any person might put forward for varying the trusts: *Re RGST Settlement Trust; Ridgwell v Ridgwell* [2007] EWHC 2666 (Ch), [2008] STC 1883 (following *Re Steed's Will Trusts* [1960] Ch 407, [1960] 1 All ER 487, CA).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/675. Settlements of land within the Settled Land Act 1925.

2. SETTLEMENTS OF LAND UNDER THE

(1) SETTLEMENTS WITHIN THE ACT

675. Settlements of land within the Settled Land Act 1925.

Since 1 January 1997, when the Trusts of Land and Appointment of Trustees Act 1996 came into force, it has been impossible to create settlements for the purposes of the Settled Land Act 1925, save in a very limited class of cases¹. Settlements governed by the Settled Land Act 1925 on 1 January 1997, however, generally retain their status and are not trusts of land within the meaning of the Trust of Land and Appointment of Trustees Act 1996². The paragraphs set out below deal with that decreasing number of settlements which are governed by the Settled Land Act 1925³.

1 See PARA 676 post.

2 See PARA 676 post.

3 See PARAS 678-896 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/676. Trusts in place of settlements.

676. Trusts in place of settlements.

No settlement created after 1 January 1997¹ is a settlement for the purposes of the Settled Land Act 1925²; and no settlement is to be deemed to be made under that Act³ after that date⁴. Any trust of property relating to land created after 1 January 1997 is a trust of land⁵.

This provision does not apply to a settlement created on the occasion of an alteration in any interest in, or of a person becoming entitled under, a settlement which is in existence at that date, or derives from such a settlement⁶. However, such a settlement is not a settlement for the purposes of the Settled Land Act 1925 if provision to the effect that it is not is made in the instrument, or any of the instruments, by which it is created⁷.

Where at any time after 1 January 1997 there is in the case of any settlement which is a settlement for the purposes of the Settled Land Act 1925 no relevant property⁸ which is, or is deemed to be, subject to the settlement, the settlement permanently ceases at that time to be a settlement for the purposes of that Act⁹.

No land held on charitable, ecclesiastical or public trusts is or is deemed to be settled land after 1 January 1997, even if it was or was deemed to be settled land before that date¹⁰.

Provision is made for the imposition of a trust in circumstances in which, apart from the above provisions, there would be a settlement for the purposes of the Settled Land Act 1925 and there would not otherwise be a trust¹¹.

1 Ie the commencement of the Trusts of Land and Appointment of Trustees Act 1996: see s 27(2); and the Trusts of Land and Appointment of Trustees Act 1996 (Commencement) Order 1996, SI 1996/2974.

2 As to settlements within the Settled Land Act 1925 see PARAS 675 ante, 678 et seq post.

3 As to settlements deemed to be made under the Settled Land Act 1925 see PARA 679 post.

4 Trusts of Land and Appointment of Trustees Act 1996 s 2(1).

5 See ibid s 1; and REAL PROPERTY vol 39(2) (Reissue) PARA 66. 'Trust of land' means any trust of property which consists of or includes land; and 'trustees of land' means trustees of a trust of land: see s 1(1); and REAL PROPERTY vol 39(2) (Reissue) PARA 66. The reference to land does not include land which is settled land: see s 1(3); and REAL PROPERTY vol 39(2) (Reissue) PARA 66. As to the creation of trusts of land see PARAS 897-899 post; and as to trustees of land see PARA 900 et seq post.

6 Ibid s 2(2).

7 Ibid s 2(3).

8 'Relevant property' means land and personal chattels to which the Settled Land Act 1925 67(1) (heirlooms) (see PARA 941 post) applies: Trusts of Land and Appointment of Trustees Act 1996 s 2(4).

9 Ibid s 2(4). See also PARA 677 post.

10 Ibid s 2(5). See also PARA 677 post.

11 See ibid s 2(6); and PARA 677 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/677. Imposition of trusts.

677. Imposition of trusts.

Where after 1 January 1997¹ a person purports to convey a legal estate² in land to a child³, or two or more children, alone, the conveyance⁴ is not effective to pass the legal estate, but operates as a declaration that the land is held in trust for the child or children (or if he purports to convey it to the child or children in trust for any persons, for those persons)⁵. Where after that date a person purports to convey a legal estate in land to a child, or two or more children, and another person who is, or other persons who are, of full age, the conveyance operates to vest the land in the other person or persons in trust for the child or children and the other person or persons (or if he purports to convey it to them in trust for any persons, for those persons)⁶. Where immediately before 1 January 1997, a conveyance was operating⁷ as an agreement to execute a settlement⁸ in favour of a child or children the agreement ceased to have effect on that date, and the conveyance subsequently operated instead as a declaration that the land was held in trust for the child or children⁹. Where after that date, a legal estate in land would, by reason of intestacy or in any other circumstances not dealt with above, vest in a person who is a child if he were a person of full age, the land is held in trust for the child¹⁰.

Where, by virtue of an instrument¹¹ coming into operation after 1 January 1997, land becomes charged voluntarily (or in consideration of marriage¹²) or by way of family arrangement¹³, whether immediately or after an interval, with the payment of a rentcharge for the life of a person or a shorter period, or capital, annual or periodical sums for the benefit of a person¹⁴, the instrument operates as a declaration that the land is held in trust for giving effect to the charge¹⁵.

Where there is a conveyance of land held on charitable, ecclesiastical or public trusts (other than land to which the Universities and College Estates Act 1925 applies¹⁶) if the statutory provisions relating to dispositions and mortgages¹⁷ do not apply to the conveyance, it must state that the land is held on such trusts, and if the specified provisions¹⁸ have not been complied with in relation to the conveyance and a purchaser has notice that the land is held on such trusts, he must see that any consents or orders necessary to authorise the transaction have been obtained¹⁹. Where any trustees or the majority of any set of trustees have power to transfer or create any legal estate in the land, the estate must be transferred or created by them in the names and on behalf of the persons in whom it is vested²⁰.

Where a person purports by an instrument coming into operation after 1 January 1997 to grant to another person an entailed interest²¹ in real or personal property, the instrument is not effective to grant an entailed interest, but operates instead as a declaration that the property is held in trust absolutely for the person to whom an entailed interest in the property was purportedly granted²². Where a person purports by an instrument coming into operation after that date to declare himself a tenant in tail of real or personal property, the instrument is not effective to create an entailed interest²³.

Where a settlement ceases to be a settlement for the purposes of the Settled Land Act 1925 because no relevant property²⁴ is, or is deemed to be, subject to the settlement, any property which is or later becomes subject to the settlement is held in trust for the persons interested under the settlement²⁵.

¹ Ie the commencement of the Trusts of Land and Appointment of Trustees Act 1996: see PARA 676 note 1 ante.

2 'Legal estates' means the estates, interest and charges, in or over land (subsisting or created at law) which are by the Law of Property Act 1925 authorised to subsist or be created as legal estates (see REAL PROPERTY vol 39(2) (Reissue) PARA 47 et seq); s 205(1)(x); definition applied by the Trusts of Land and Appointment of Trustees Act 1996 s 23(2).

3 The Trusts of Land and Appointment of Trustees Act 1996 refers to minors but 'child' has been substituted throughout this title: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 3.

4 For the meaning of 'conveyance' see REAL PROPERTY vol 39(2) (Reissue) PARA 232; definition applied by ibid s 23(2).

5 Ibid s 2(6), Sch 1 para 1(1).

6 Ibid Sch 1 para 1(2).

7 Ie by virtue of the Settled Land Act 1925 s 27 (repealed): see the Trusts of Land and Appointment of Trustees Act 1996 Sch 1 para 1(3).

8 For the meaning of 'settlement' see PARA 678 note 1 post; definition applied by ibid s 23(2).

9 Ibid Sch 1 para 1(3).

10 Ibid Sch 1 para 2.

11 'Instrument' does not include a statute, unless the statute creates a settlement: Law of Property Act 1925 s 205(1)(viii); definition applied by the Trusts of Land and Appointment of Trustees Act 1996 s 23(2).

12 As to marriage as consideration see PARA 660 et seq ante.

13 As to family arrangements see PARA 1002 et seq post.

14 As to rentcharges and annual payments see generally RENTCHARGES AND ANNUITIES.

15 Trusts of Land and Appointment of Trustees Act 1996 Sch 1 para 3.

16 See EDUCATION vol 15(2) (2006 Reissue) PARA 1379.

17 Ie the Charities Act 1993 ss 37(1), 39(1) (see CHARITIES vol 8 (2010) PARAS 397, 399): see the Trusts of Land and Appointment of Trustees Act 1996 Sch 1 para 4(2).

18 Ie the Charities Act 1993 ss 37(2), 39(2) (see CHARITIES vol 8 (2010) PARAS 397, 399): see the Trusts of Land and Appointment of Trustees Act 1996 Sch 1 para 4(2).

19 Ibid Sch 1 para 4(1), (2).

20 Ibid Sch 1 para 4(3).

21 As to entailed interests see PARA 715 et seq post; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

22 Trusts of Land and Appointment of Trustees Act 1996 Sch 1 para 5(1).

23 Ibid Sch 1 para 5(2).

24 For the meaning of 'relevant property' see PARA 676 note 8 ante.

25 Trusts of Land and Appointment of Trustees Act 1996 Sch 1 para 6.

UPDATE

677 Imposition of trusts

TEXT AND NOTE 15--1996 Act Sch 1 para 3 amended: Civil Partnership Act 2004 Sch 27 para 153.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/678. What constitutes a settlement.

678. What constitutes a settlement.

If a settlement¹ is capable of being governed by the Settled Land Act 1925, having regard to the provisions of the Trusts of Land and Appointment of Trustees Act 1996², it will be a settlement for the purposes of the Settled Land Act 1925 if it is created by or is any deed, will, agreement for a settlement or other agreement³, Act of Parliament (public or private⁴), or other instrument, or any number of instruments⁵, whenever made or passed, under or by virtue of which instrument or instruments any land⁶ (not held upon trust for sale⁷), after 31 December 1925 stands for the time being⁸:

- 25 (1) limited in trust⁹ for any persons by way of succession¹⁰;
- 26 (2) limited in trust for any person in possession (a) for an entailed interest¹¹ whether or not capable of being barred or defeated¹²; (b) for an estate in fee simple or for a term of years absolute¹³ subject to an executory limitation, gift or disposition over on failure of his issue or in any other event¹⁴; (c) for a base or determinable fee¹⁵ or any corresponding interest in leasehold land¹⁶; or (d) being a child¹⁷, for an estate in fee simple or for a term of years absolute¹⁸;
- 27 (3) limited in trust for any person for an estate in fee simple or for a term of years absolute contingently on the happening of any event¹⁹; or
- 28 (4) charged, whether voluntarily or in consideration of marriage²⁰ or by way of family arrangement²¹, and whether immediately or after an interval, with the payment of any rentcharge for the life of any person²², or any less period, or of any capital, annual, or periodical²³ sums for the portions, advancement, maintenance or otherwise for the benefit²⁴ of any persons, with or without any term of years for securing or raising the rentcharge or other sums²⁵.

If land is held on an immediate binding²⁶ trust for sale²⁷, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone sale²⁸, a settlement is not created in respect of it by any of the limitations or charges or in any of the circumstances mentioned above²⁹.

1 'Settlement' includes an instrument or instruments which, under the Settled Land Act 1925, or the Acts which it replaces (ie the Settled Land Acts 1882 to 1890, namely the Settled Land Act 1882, the Settled Land Act 1884, the Settled Land Acts (Amendment) Act 1887, the Settled Land Act 1889, and the Settled Land Act 1890: Short Titles Act 1896 s 2, Sch 2), is or are deemed (see PARA 679 post) to be or which together constitute (see PARAS 681-683 post) a settlement, and a settlement which is deemed to have been made by any person or to be subsisting for the purposes of the Settled Land Act 1925: s 117(1)(xxiv). 'Settlement' includes compound settlement if one subsists: see s 1(1) proviso; and PARA 681 post. See also *Re Cradocks Settled Estates* [1926] Ch 944; *Re Cayley and Evans' Contract* [1930] 2 Ch 143; *Re Curwen, Curwen v Graham* [1931] 2 Ch 341. As to retrospective amendments of the Settled Land Acts 1882 to 1890 see the Settled Land Act 1925 s 118, Sch 4. For the purposes of the Settled Land Act 1925, a settlement may either mean the document or documents creating the settlement or may be a particular state of affairs brought or deemed to have been brought about by one or more documents; and documents may create more than one settlement: *Re Ogle's Settled Estates* [1927] 1 Ch 229. See also *Roome v Edwards* [1982] AC 279 at 292-293, [1981] 1 All ER 736 at 739-740, HL, per Lord Wilberforce.

2 It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

3 See *Bacon v Bacon* [1947] P 151, [1947] 2 All ER 327, where it was held that a consent order, made on divorce, for securing to a wife for life occupation of a house constitutes an agreement creating a settlement

within the Settled Land Act 1925 s 1(1) (as amended). As to consent orders see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 713 et seq.

4 *Vine v Raleigh* [1896] 1 Ch 37. An Act which neither incorporates nor affects the limitations of a settlement, but merely confers powers of management upon its trustees, is not part of the settlement: *Talbot v Scarisbrick* [1908] 1 Ch 812. See also *Re Buttle's Will Trusts, Buttle v IRC* [1977] 3 All ER 1039, [1977] 1 WLR 1200, CA, where no settlement arose on a partial intestacy by virtue of the will and the Administration of Estates Act 1925 (see EXECUTORS AND ADMINISTRATORS).

5 As to compound settlements see PARA 681 et seq post.

6 For the meaning of 'land' see PARA 680 note 1 post.

7 See the text and notes 26-29 infra. See also PARA 609 ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 64 et seq. The Settled Land Act 1925 s 1 (as amended) does not apply to land held on any trust arising by virtue of the Trusts of Land and Appointment of Trustees Act 1996 s 5(1), Sch 2 (see REAL PROPERTY vol 39(2) (Reissue) PARA 66): see s 5(2).

8 See the Settled Land Act 1925 s 1(1).

9 'Trust' includes an implied or constructive trust: *ibid* s 117(1)(xii). As to implied and constructive trusts see TRUSTS vol 48 (2007 Reissue) PARA 687 et seq.

10 *Ibid* s 1(1)(i). The words 'stands ... limited ... by way of succession' have no technical force, and must be construed broadly (see *Re Mundy and Roper's Contract* [1899] 1 Ch 275, CA; *Re Phillimore's Estate, Phillimore v Milnes* [1904] 2 Ch 460; *Re Marshall's Settlement, Marshall v Marshall* [1905] 2 Ch 325; *Re Trafford's Settled Estates* [1915] 1 Ch 9; *Re Monckton's Settlement, Monckton v Calder* [1917] 1 Ch 224); and they may include land subject to a right of residence (*Re Hanson, Hanson v Eastwood* [1928] Ch 96; *Binions v Evans* [1972] Ch 359, [1972] 2 All ER 70, CA). See further PARA 762 note 18 post. However, the words were held not to include an instrument by which land stood limited to, or in trust for, one and the same person for various estates and interests by way of succession (see *Re Pocock and Prankerd's Contract* [1896] 1 Ch 302), or by which land was limited to A B and his successors, vicars of X (see *Ex p Vicar of Castle Bytham, ex p Midland Rly Co* [1895] 1 Ch 348; *Re Bishop of Bath and Wells* [1899] 2 Ch 138), or by which a house was given upon trust to permit the minister for the time being officiating at a particular church to reside in it (*Re Higgs, Symonds v Rhodes* [1927] WN 316). As to land held upon ecclesiastical trusts see PARA 680 post. Where a trust deed created under the Settled Land Act 1925 s 1 (as amended) provides a person with a life interest in a property, the sale proceeds of that property may be used by the trustees to purchase another property in which the person has a life interest, even if the deed makes no such provision: *Costello v Costello* [1996] 3 FCR 40, [1996] 1 FLR 805, CA.

11 'Entailed interest' means an interest in tail or in tail male or in tail female or in tail special: see the Law of Property Act 1925 s 130(1); definition applied by the Settled Land Act 1925 s 117(1)(xxviii). The Law of Property Act 1925 s 130(1) has been repealed by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4 except in relation to any entailed interest created before 1 January 1997: see REAL PROPERTY vol 39(2) (Reissue) PARA 119. As to the application of this provision to personality settled after 1925 see PARA 939 post. As to entailed interests generally see PARA 715 et seq post; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

12 Settled Land Act 1925 s 1(1)(ii)(a). As to disentail see REAL PROPERTY vol 39(2) (Reissue) PARA 121.

13 'Term of years absolute' means a term of years, taking effect either in possession or in reversion, with or without impeachment for waste, whether at a rent or not and whether subject or not to another legal estate, and whether certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest), but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest, nor, if created after 1925, a term of years which is not expressed to take effect in possession within 21 years after its creation where required by statute to take effect within that period; and 'term of years' includes a term for less than a year, or for a year or years and a fraction of a year or from year to year: *ibid* s 117(1)(xxix). 'Legal estate' means an estate interest or charge in or over land (subsisting or created at law) which is by statute authorised to subsist or to be created at law: s 117(1)(xi). As to legal estates and terms of years generally see REAL PROPERTY vol 39(2) (Reissue) PARA 45.

14 *Ibid* s 1(1)(ii)(b).

15 *Ie* other than a fee which is a fee simple absolute by virtue of the Law of Property Act 1925 s 7 (as amended) (see REAL PROPERTY vol 39(2) (Reissue) PARA 91); see the Settled Land Act 1925 s 1(1)(ii)(c) (as amended: see note 16 infra). 'Determinable fee' means a fee determinable whether by limitation or condition: s 117(1)(iv). See also REAL PROPERTY vol 39(2) (Reissue) PARAS 114-116.

16 *Ibid* s 1(1)(ii)(c) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3).

17 See PARA 665 note 13 ante.

18 Settled Land Act 1925 s 1(1)(ii)(d). A child is deemed to be entitled in possession notwithstanding any subsisting right of dower (not assigned by metes and bounds) affecting the land: see s 1(3); and PARA 679 post. Where a child is beneficially entitled to land for an estate in fee simple or for a term of years absolute and by reason of an intestacy or otherwise there is no instrument under which his interest arises or is acquired, a settlement is deemed to have been made by the intestate or by the person whose interest the child has acquired: s 1(2). See also *Re Taylor, Pullan v Taylor* [1931] 2 Ch 242; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 32. As to the age of majority see PARA 605 note 1 ante.

19 Settled Land Act 1925 s 1(1)(iii). See also *Re Bird, Watson v Nunes* [1927] 1 Ch 210. See further REAL PROPERTY vol 39(2) (Reissue) PARA 115.

20 As to marriage as consideration see PARAS 660-663 ante.

21 As to family arrangements see PARA 1002 et seq post.

22 As to rentcharges for the life of a person see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 74 et seq.

23 A perpetual annuity is an annual or periodical sum for the 'benefit' of the person receiving it: *Re Austen, Collins v Margetts* [1929] 2 Ch 155.

24 'Benefit' is not to be construed ejusdem generis with portions, advancement and maintenance: *Re Bird, Watson v Nunes* [1927] 1 Ch 210; *Re Austen, Collins v Margetts* [1929] 2 Ch 155. See also *Pilkington v IRC* [1964] AC 612 at 634-635, [1962] 3 All ER 622 at 627, HL.

25 See the Settled Land Act 1925 s 1(1)(v). The statutory prohibition on creating rentcharges does not apply to the creation of a rentcharge which has the effect of making the land settled land, or which would have that effect but for the fact that the land is already settled land or is held on a trust of land: see the Rentcharges Act 1977 s 2(3)(a), (b) (as substituted); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 774. Such a rentcharge is not subject to the provisions of the Rentcharges Act 1977 relating to the extinguishment of rentcharges (see s 3(3); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 894), or to the redemption of rentcharges (see s 8(4); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 900). Settled land which on 1 January 1926 became subject to a settlement by reason only of the existence of a charge was not settled land immediately prior to that date: *Re Earl of Carnarvon's Chesterfield Settled Estates, Re Earl of Carnarvon's Highclere Settled Estates* [1927] 1 Ch 138; *Re Ogle's Settled Estates* [1927] 1 Ch 229; *Re Lord Alington and London County Council's Contract* [1927] 2 Ch 253; *Re Blake's Settled Estates* [1932] IR 637. The 'settlement' is the instrument creating the charge: *Re Earl of Carnarvon's Chesterfield Settled Estates, Re Earl of Carnarvon's Highclere Settled Estates* supra; *Re Ogle's Settled Estates* supra. This provision has been held to include land subject to a charge given to two or more persons as joint tenants (*Re Gaul and Houlston's Contract* [1928] Ch 689, CA), or as tenants in common (*Re Bird, Watson v Nunes* [1927] 1 Ch 210). When different portions of an estate had, prior to 1 January 1926, been sold to different purchasers subject to a family charge, each portion became on that date the subject matter of a separate settlement and accordingly separate sets of trustees could be appointed in respect of each settlement: *Re Ogle's Settled Estates* supra. As to the power to convey settled land subject to a charge see PARA 703 post.

26 This concept is relevant in determining the status of a settlement as at 1 January 1997, although the word 'binding' is excluded from the definition of 'trust for sale' in the Law of Property Act 1925 s 205(1)(xxix) by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4: see note 27 infra. In any event the word 'binding' does not exclude a trust for sale as usually understood (*Re Parker's Settled Estates, Parker v Parker* [1928] Ch 247; not following *Re Leigh's Settled Estates* [1926] Ch 852, and *Re Leigh's Settled Estates (No 2)* [1927] 2 Ch 13), but there will not be an immediate binding trust for sale unless the trust for sale comprises the whole estate which is the subject matter of the settlement (*Re Parker's Settled Estates, Parker v Parker* supra; *Re Norton, Pinney v Beauchamp* [1929] 1 Ch 84; *Re Beaumont Settled Estates* [1937] 2 All ER 353; *Re Sharpe's Deed of Release, Sharpe and Fox v Gullick* [1939] Ch 51, [1938] 3 All ER 449; *Bacon v Bacon* [1947] P 151, [1947] 2 All ER 327).

27 'Trust for sale', in relation to land, means an immediate trust for sale, whether or not exercisable at the request or with the consent of any person: Law of Property Act 1925 s 205(1)(xxix) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); definition applied by the Settled Land Act 1925 s 117(1)(xxx). 'Trustees for sale' means the persons (including a personal representative (see PARA 697 note 6 post) holding land on trust for sale: Law of Property Act 1925 s 205(1)(xxix); definition applied by the Settled Land Act 1925 s 117(1)(xxx).

28 A power to postpone sale is now implied into express trusts for sale, whenever created, and the reference to a power to postpone sale has now been deleted from the definition of 'trust for sale' in the Law of Property Act 1925: see note 27 supra.

29 See the Settled Land Act 1925 s 1(7) (added by the Law of Property (Amendment) Act 1926 s 7, Schedule). If a settlement is expressed to direct trustees for sale to permit a person who is not entitled to the rents and profits until sale to reside free of rent in the property, that person is tenant for life under the Settled Land Act 1925, and the land is not held on an immediate binding trust for sale: *Dodsworth v Dodsworth* (1973) 228 Estates Gazette 1115, CA, distinguishing *Re Herklots' Will Trusts, Temple v Scorer* [1964] 2 All ER 66, [1964] 1 WLR 583, where the person to whom the right of occupation was given was entitled to the rents and profits until sale, and overruling *Ayer v Benton* (1967) 204 Estates Gazette 359. As to when land subject to a right of residence is settled land see also note 10 supra.

UPDATE

678 What constitutes a settlement

NOTE 1--1925 Act s 118, Sch 4 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/679. Where land is deemed to be the subject of a settlement.

679. Where land is deemed to be the subject of a settlement.

In certain cases land which is not the subject of a settlement¹ is deemed for the purposes of the Settled Land Act 1925, to be the subject of a settlement. These are:

- 29 (1) where there is a subsisting right of dower² (not assigned by metes and bounds) affecting land to which a child³ is entitled in possession, in which case the right of dower is deemed to be an interest comprised in the subject of the settlement and coming to the dowress under or by virtue of the settlement⁴;
- 30 (2) where dower has been assigned by metes and bounds, in which case the letters of administration or probate granted in respect of the estate of the husband of the dowress is deemed a settlement made by the husband⁵;
- 31 (3) an estate or interest not disposed of by a settlement and remaining in or reverting to the settlor, or any person deriving title under him, is for the purposes of the Settled Land Act 1925 an estate or interest comprised in the subject of the settlement and coming to the settlor or such person under or by virtue of the settlement⁶;
- 32 (4) where a settlement creates an entailed interest which is incapable of being barred or defeated⁷, or a base or determinable fee⁸, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land⁹;
- 33 (5) where the subject of a settlement is an entailed interest, or base or determinable fee, whether or not the reversion or right of reverter is in the Crown, or any corresponding interest in leasehold land¹⁰; and
- 34 (6) the estate or interest of a tenant by the curtesy, which is deemed to be an estate or interest arising under a settlement made by his wife¹¹.

1 For the meaning of 'settlement' see PARA 678 note 1 ante.

2 'Dower' includes freebench: Settled Land Act 1925 s 117(1)(vi). Dower and freebench have been abolished with certain savings: see the Administration of Estates Act 1925 ss 45(1)(c), 51(2) (as amended); and EXECUTORS AND ADMINISTRATORS; REAL PROPERTY vol 39(2) (Reissue) PARA 161. As to estates in dower see REAL PROPERTY vol 39(2) (Reissue) PARA 161.

3 See PARA 665 note 13 ante.

4 See the Settled Land Act 1925 s 1(3). See also *Re Taylor, Pullan v Taylor* [1931] 2 Ch 242.

5 See the Settled Land Act 1925 s 1(3). This provision applies whether the person entitled subject to the right of dower is a child or of full age. As to letters of administration or probate see EXECUTORS AND ADMINISTRATORS.

6 Ibid s 1(4). See also *Re Hunter and Hewlett's Contract* [1907] 1 Ch 46; and cf *Re Bond, Panes v A-G* [1901] 1 Ch 15. This provision binds the Crown: Settled Land Act 1925 s 1(6).

7 For the meaning of 'entailed interest' see PARA 678 note 11 ante. See also PARA 677 text and note 22 ante.

8 For the meaning of 'determinable fee' see PARA 678 note 15 ante.

9 Settled Land Act 1925 s 1(5)(a). See also note 10 infra.

10 Ibid s 1(5)(b). Under s 1(5)(a) or (b) (see heads (4) and (5) in the text) the reversion or right of reverter upon the cesser of the interest so created or settled is deemed to be an interest comprised in the subject of the settlement, and limited by the settlement: s 1(5). This provision binds the Crown: s 1(6).

11 Ibid s 20(3). Tenancy by the courtesy has been abolished with certain savings: see the Administration of Estates Act 1925 ss 45(1)(b), 51(2); Law of Property Act 1925 s 130(4). See further EXECUTORS AND ADMINISTRATORS; REAL PROPERTY vol 39(2) (Reissue) PARAS 157-160; and PARA 939 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/680. Meaning of 'settled land'.

680. Meaning of 'settled land'.

'Settled land' means land¹ which is or is deemed to be the subject of a settlement². The fact that part of an estate is settled land does not make the whole estate settled land³. Land held upon trust for sale is not settled land within the Settled Land Act 1925⁴.

Land held on charitable, ecclesiastical or public trusts is no longer settled land, whenever the trust was created⁵.

1 'Land' includes land of any tenure, and mines and minerals whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over or derived from land, and any estate or interest in land, but does not (except in the phrase 'trust of land') include an undivided share in land: Settled Land Act 1925 s 117(1)(ix) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2). This includes the benefit of a restrictive covenant: *Earl of Leicester v Wells-next-the-Sea UDC* [1973] Ch 110, [1972] 3 All ER 77. As to settlements of advowsons see PARA 609 ante. 'Hereditaments' means real property which on an intestacy might before 1926 have devolved on an heir (Settled Land Act 1925 s 117(1)(vii)) (see further EXECUTORS AND ADMINISTRATORS); 'manor' includes lordship, and reputed manor or lordship (s 117(1)(xiv)) (see further CUSTOM AND USAGE vol 12(1) (Reissue) PARA 695 et seq); and 'mines and minerals' means mines and minerals whether already opened or in work or not, and includes all minerals and substances in, on or under the land, obtainable by underground or by surface working (s 117(1)(xv)) (see generally MINES, MINERALS AND QUARRIES). The settled land may consist entirely of ground rents (see *Re Wilkinson, Lloyd v Steel* (1901) 85 LT 43); and where prior to 1926 two moieties of land were settled by separate instruments upon the same limitations, it was held that they became merged and that the entirety of the land was settled land (*Re Egton Settled Estate, Foster v Foster* [1931] 2 Ch 180).

2 See the Settled Land Act 1925 ss 2, 117(1)(xxiv). For the meaning of 'settlement' see PARA 678 note 1 ante; and as to land deemed to be the subject of a settlement see PARA 679 ante.

3 See *Re Bective Estate* (1891) 27 LR Ir 364.

4 See PARA 678 ante.

5 See the Trusts of Land and Appointment of Trustees Act 1996 s 2(5); and PARA 676 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/681. Meaning of 'compound settlement'.

681. Meaning of 'compound settlement'.

A settlement¹ for the purposes of the Settled Land Act 1925, may be created by or consist of any number of instruments². Where a series of settlements extending over several generations has been effected by means of powers of appointment and disentailing assurances, the whole series forms one settlement, called a 'compound settlement'³.

1 For the meaning of 'settlement' see PARA 678 note 1 ante.

2 See the Settled Land Act 1925 s 1(1) (as amended); and PARA 678 ante. As to the position before the Settled Land Act 1925 came into force see PARA 682 post.

3 Where land is the subject of a compound settlement, references in the Settled Land Act 1925 to the settlement must be construed as meaning such compound settlements, unless the context otherwise requires: *ibid* s 1(1) proviso. For the meaning of 'land' see PARA 680 note 1 ante. A settlement by reference to the trusts of another settlement does not constitute a compound settlement: *Re Adair, Adair v Treherne* [1927] WN 229; *Re Shelton's Settled Estates* [1928] WN 27. As to powers of appointment see PARA 922 et seq post. As to disentailing deeds see REAL PROPERTY vol 39(2) (Reissue) PARA 121 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/682. Co-existing settlements before 1926.

682. Co-existing settlements before 1926.

Under the law in force prior to 1926¹ there might be at the same time a more comprehensive settlement consisting of several deeds, and a less comprehensive settlement constituted by one of the deeds only², or even a number of settlements each constituted by one or a number of deeds. When a tenant for life wished to exercise his statutory powers, it was necessary to determine what settlements were subsisting and under which one or more of them the tenant for life could exercise his powers³.

1 Before the Settled Land Act 1925 came into force. As to the position after 1925 see PARA 683 post.

2 *Re Du Cane and Nettlefold's Contract* [1898] 2 Ch 96 at 105; *Re Mundy and Roper's Contract* [1899] 1 Ch 275 at 295, CA; *Re Lord Wimborne and Browne's Contract* [1904] 1 Ch 537.

3 *Re Cornwallis-West and Munro's Contract* [1903] 2 Ch 150; *Parr v A-G* [1926] AC 239, HL. See also the cases cited in note 2 supra. A tenant for life could sell settled land free from jointures created under powers prior to the deed by which his life estate was created: *Re Marquis of Ailesbury and Lord Iveagh* [1893] 2 Ch 345; *Re Mundy and Roper's Contract* [1899] 1 Ch 275, CA; *Re Phillimore's Estate, Phillimore v Milnes* [1904] 2 Ch 460.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/683. Since 1925 a compound settlement is the only settlement.

683. Since 1925 a compound settlement is the only settlement.

Since 31 December 1925, where a settlement consists of more than one instrument, there can be one settlement only for the purposes of the Settled Land Act 1925, namely the compound settlement¹; and, except in one case², the settled land can only be dealt with by the tenant for life in exercise of his powers under the compound settlement³. However, it is of no importance to a purchaser dealing with the tenant for life under which instrument the life estate of the tenant for life arises, because the tenant for life will in every case be able to exercise all the powers conferred by any of the instruments constituting the settlement⁴.

1 See PARA 681 text and note 3 ante. See also *Re Cradock's Settled Estates* [1926] Ch 944; *Re Cayley and Evans' Contract* [1930] 2 Ch 143; *Re Curwen, Curwen v Graham* [1931] 2 Ch 341.

2 Ie where a person is beneficially entitled to land subject to a prior interest, in which case he may convey the legal estate subject to that interest as if the land had not been settled land: see the Law of Property (Amendment) Act 1926 s 1(1), (3); and PARA 703 post.

3 See PARA 761 et seq post.

4 *Re Cowley Settled Estates* [1926] Ch 725. Cf *Re Beaumont Settled Estates* [1937] 2 All ER 353.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/684. Effect of dealings with beneficial interests.

684. Effect of dealings with beneficial interests.

Any instrument by which either a tenant for life¹ or a remainderman deals with his beneficial interest and by which new beneficial interests² in the settled land³ are created is one of the documents declaring trusts concerning the settled land, and, as such, is one of the instruments constituting a compound settlement⁴. However, an instrument by which a tenant for life merely makes an absolute assignment of his beneficial interest does not form part of a compound settlement⁵, and the same principle applies in the case of an instrument by which a tenant for life creates a charge upon his beneficial interest by way of security, as well as in the case of any similar dealings by a remainderman⁶. An assignment by a tenant for life of his beneficial interest, whether or not his interest was in possession at the time when the assignment was made, does not operate to pass the statutory powers to the assignee⁷. While, therefore, a tenant for life must give effect to all equitable interests affecting the settled land of which he has notice⁸, including the rights of an assignee or chargee of his own beneficial interest, any disposition by him of that interest must be ignored in ascertaining the person who is entitled to have a vesting instrument executed in his favour⁹.

An apparent exception to this principle is created by the provision that an instrument by which a tenant for life, in consideration of marriage or as part or by way of any family arrangement, not being a security for payment of money advanced, makes an assignment of or creates a charge upon his estate or interest under the settlement is to be deemed one of the instruments creating the settlement¹⁰. However, such an instrument is not one of the instruments creating the settlement for all the purposes of the Settled Land Act 1925, but is only to be deemed such for the purpose of avoiding the necessity of obtaining the assignee's consent to the exercise of the statutory powers where such consent would otherwise be required¹¹. Such an instrument does not, therefore, form any exception to the general rule.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

2 As to beneficial interests see PARA 761 et seq post.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 As to the meaning of 'compound settlement' see PARA 681 text and note 3 ante.

5 *Re Earl of Carnarvon's Chesterfield Settled Estates, Re Earl of Carnarvon's Highclere Settled Estates* [1927] 1 Ch 138.

6 *Re Earl of Carnarvon's Chesterfield Settled Estates, Re Earl of Carnarvon's Highclere Settled Estates* [1927] 1 Ch 138. See also MORTGAGE vol 77 (2010) PARA 101 et seq.

7 See the Settled Land Act 1925 s 104(1); and PARA 777 post. The only exception to this rule is where the tenant for life surrenders his life estate to the next remainderman: see PARA 778 post.

8 See *ibid* s 16(1)(i); and PARA 767 post.

9 See PARA 688 et seq post.

10 Settled Land Act 1925 s 104(11). Any such instrument is not an assignment for value for the purposes of s 104 (see PARA 777 et seq post): s 104(11). This provision does not have effect with respect to any disposition made before 18 August 1890, if inconsistent with the nature or terms of the disposition: s 104(11) proviso.

11 *Re Du Cane and Nettlefold's Contract* [1898] 2 Ch 96.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/685. Settlements by different instruments on the same limitations.

685. Settlements by different instruments on the same limitations.

Where estates¹ are settled by different settlements² upon the same limitations³, whether by reference or otherwise, the following provisions apply⁴:

- 35 (1) the estates or any two or more of them, as the case may require, may be treated as one aggregate estate, in which case the aggregate estate will be, for all the purposes of the Settled Land Act 1925, the settled lands⁵;
- 36 (2) where the trustees for the purposes of the Settled Land Act 1925⁶ of the two or several settlements are the same persons, they will be the trustees of the settlement of the aggregate estate for all the purposes of that Act, and all or any part of the capital money arising from one of the estates may be applied by the direction of the tenant for life⁷ or statutory owner⁸ as if the money had arisen from any other of the estates⁹;
- 37 (3) where the trustees for the purposes of the Settled Land Act 1925 of the settlements or of any two or more of them are not the same persons¹⁰, then (a) any notice required to be given by the Act¹¹ to the trustees of the settlement and to the solicitor of such trustees must be given to the trustees of every settlement which comprises any part of the land to which such notice relates and to the solicitor of those trustees¹²; (b) any capital money arising on any sale, exchange, lease¹³, mortgage, charge or other disposition¹⁴ of land comprised in more than one settlement must be apportioned between the trustees of the different settlements in such manner as the tenant for life or statutory owner may think fit¹⁵; and (c) all or any part of the capital money arising from the land comprised in one of the settlements may be paid by the trustees of that settlement, by such direction, to the trustees of any of the other settlements, to be applied by such last-mentioned trustees as if the money had arisen from land comprised in that other settlement¹⁶; and
- 38 (4) for the purposes of these provisions, money liable to be laid out in the purchase of land to be settled upon the same limitations as other land may be applied and dealt with in like manner in all respects as if land had been purchased and settled, and the money were capital money arising from it¹⁷.

1 'Estate' means the land, capital money and securities representing capital money for the time being subject to a particular settlement: Settled Land Act 1925 s 91(4). For the meaning of 'capital money arising under the Act' see PARA 795 post.

2 For the meaning of 'settlement' see PARA 678 note 1 ante.

3 Estates are to be deemed to be settled upon the same limitations, notwithstanding that any of them may be subject to incumbrances, charges or powers of charging to which the other or others of them may not be subject: Settled Land Act 1925 s 91(2). Cf *Re Lord Stamford's Settled Estates* (1889) 43 ChD 84; *Re Byng's Settled Estates* [1892] 2 Ch 219. As to limitations see PARA 715 et seq post.

4 See the Settled Land Act 1925 s 91(1).

5 Ibid s 91(1)(i). As many vesting instruments may be executed as may be convenient: *Re Clayton's Settled Estates* [1926] Ch 279. As to the application of money settled by one deed in the improvement of land settled by another see PARA 809 text and note 12 post. For the meaning of 'settled land' see PARA 680 text to note 2 ante.

6 See PARA 750 et seq post.

7 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

8 As to the statutory owner see PARA 766 post.

9 Settled Land Act 1925 s 91(1)(ii). Capital money arising under one settlement may be applied in discharging incumbrances which are charged on land comprised in that as well as in another settlement, even though the incumbrances are not charged on the capital money: *Re Symons, Symons-Jeune v Bunbury* [1927] 1 Ch 344. For the meaning of 'trustees of the settlement' see PARA 750 note 1 post. As to trustees of settlements by reference see PARA 755 post. As to life interests see PARA 716 post.

10 Settled Land Act 1925 s 91(1)(iii).

11 See PARAS 783-784 post.

12 Settled Land Act 1925 s 91(1)(iii)(a).

13 'Lease' includes an agreement for a lease: *ibid* s 117(1)(x).

14 'Disposition' includes a mortgage, charge by way of legal mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest in it by any instrument except a will, and 'dispose of' has a corresponding meaning: *ibid* s 117(1)(v). Where any provision in the Settled Land Act 1925 refers to sale, purchase, exchange, mortgaging, charging, leasing, or other disposition or dealing, or to any power, consent, payment, receipt, deed, assurance, contract, expenses, act, or transaction, it is to be construed (unless the contrary appears) as extending only to sales, purchases, exchanges, mortgages, charges, leases, dispositions, dealings, powers, consents, payments, receipts, deeds, assurances, contracts, expenses, acts, and transactions under that Act: s 112(2).

15 *Ibid* s 91(1)(iii)(b).

16 *Ibid* s 91(1)(iii)(c).

17 *Ibid* s 91(1)(iv). As to what is covered by the expression 'money liable to be laid out in the purchase of land' see PARA 796 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/686. Position where all estates are not subject to the same incumbrances.

686. Position where all estates are not subject to the same incumbrances.

If any of the estates are subject to incumbrances, charges or powers of charging to which the other or others of them is or are not subject¹, the powers relating to the payment or application of capital money² may not be exercised without a court order unless the settlement³ under which the capital money is held otherwise provides⁴. However, a court order is not necessary if part, at any rate, of the land comprised in each settlement is subject to the same incumbrance⁵.

1 See PARA 685 note 3 ante.

2 Ie the powers contained in the Settled Land Act 1925 s 91 (see PARA 685 ante): see s 91(2) proviso.

3 For the meaning of 'settlement' see PARA 678 note 1 ante.

4 Ibid s 91(2) proviso. As to the court see PARA 792 post.

5 *Re Symons, Symons-Jeune v Bunbury* [1927] 1 Ch 344.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(1) SETTLEMENTS WITHIN THE ACT/687. Appointment by the court of trustees of the settlement of an aggregate estate.

687. Appointment by the court of trustees of the settlement of an aggregate estate.

The foregoing provisions as to different estates settled upon the same limitations¹ have effect without prejudice to any appointment made by the court before 1926 of trustees of the settlement of an aggregate estate, and to the court's power in any case after 1925 to make any such appointment, and, in any case where such appointment has been or is made, those provisions have effect as if the trustees so appointed and their successors in office were the trustees for the purposes of the Settled Land Act 1925 of each of the settlements constituting the settlement² of the aggregate estate, and there were no other trustees of it for the purposes of that Act³.

1 See the Settled Land Act 1925 s 91: see PARAS 685-686 ante.

2 For the meaning of 'settlement' see PARA 678 note 1 ante.

3 See the Settled Land Act 1925 s 91(3). As to the appointment of trustees by the court see PARAS 756-758 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/688. Method of creating a settlement inter vivos.

(2) VESTING DEEDS AND TRUST INSTRUMENTS

688. Method of creating a settlement inter vivos.

It has not been possible to create a new settlement under the Settled Land Act 1925 since 1 January 1997¹. However, this does not affect existing settlements and the law relating to the method of creating a settlement is still of relevance in relation to those existing settlements.

Every settlement² of a legal estate³ in land⁴ inter vivos⁵, save as otherwise provided in the Settled Land Act 1925, must have been effected by two deeds, namely, a vesting deed⁶ and a trust instrument⁷, and if effected in any other way did not operate to transfer or create a legal estate⁸.

1 See the Trusts of Land and Appointment of Trustees Act 1996 s 2; and PARA 676 ante.

2 For the meaning of 'settlement' see PARA 678 note 1 ante.

3 For the meaning of 'legal estate' see PARA 678 note 13 ante.

4 For the meaning of 'land' see PARA 680 note 1 ante.

5 As to settlements created by will see PARA 697 post.

6 In relation to settled land, 'vesting deed' or 'vesting order' means the instrument by which settled land is conveyed to or vested or declared to be vested in a tenant for life (see PARA 671 note 5 ante) or statutory owner (see PARA 766 post): Settled Land Act 1925 s 117(1)(xxx).

7 'Trust instrument' means the instrument by which the trusts of the settled land are declared, and includes any two or more such instruments and a settlement or instrument which is deemed to be a trust instrument: *ibid* s 117(1)(xxx). 'Instrument' does not include a statute unless the statute creates a settlement: s 117(1) (viii). See also PARA 695 post.

8 *Ibid* s 4(1).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/689. Function of a principal vesting deed.

689. Function of a principal vesting deed.

By the vesting deed¹ the land is conveyed² to the tenant for life³ or statutory owner⁴, and if more than one as joint tenants, for the legal estate⁵ the subject of the intended settlement⁶, except that, if the legal estate is already vested in the tenant for life or statutory owner, it is sufficient, without any other conveyance, if the vesting deed declares that the land is vested in him for that estate⁷. A vesting deed for giving effect to a settlement⁸, or for conveying settled land to a tenant for life or statutory owner during the subsistence of the settlement, is referred to in the Settled Land Act 1925 as a 'principal vesting deed'⁹. There can, if desired, be more than one principal vesting deed, and different parcels of the settled land can be comprised in separate principal vesting deeds¹⁰.

1 For the meaning of 'vesting deed' see PARA 688 note 6 ante.

2 As to the procedure where the land is registered land see LAND REGISTRATION vol 26 (2004 Reissue) PARA 894 et seq.

3 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

4 As to the statutory owner see PARA 766 post.

5 For the meaning of 'legal estate' see PARA 678 note 13 ante.

6 See the Settled Land Act 1925 s 4(2). When a person settles an estate, *prima facie*, he intends to include in the conveyance every interest which he can part with and does not except: *Johnson v Webster* (1854) 4 De GM & G 474 at 488. See also the Law of Property Act 1925 s 63; and REAL PROPERTY vol 39(2) (Reissue) PARA 199.

7 See the Settled Land Act 1925 s 4(2) proviso. However, a person can convey land to himself: see the Law of Property Act 1925 s 72(3); and REAL PROPERTY vol 39(2) (Reissue) PARA 244.

8 For the meaning of 'settlement' see PARA 678 note 1 ante.

9 See the Settled Land Act 1925 s 5(1). As to the form of the deed see PARA 690 post. New settlements can no longer be created: see PARA 688 ante.

10 *Re Clayton's Settled Estates* [1926] Ch 279.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/690. Form of principal vesting deed.

690. Form of principal vesting deed.

A principal vesting deed¹ must contain:

- 39 (1) a description, either specific or general, of the settled land²;
- 40 (2) a statement that the settled land is vested in the person or persons to whom it is conveyed or in whom it is declared to be vested upon the trusts from time to time affecting the settled land³;
- 41 (3) the names of the persons who are appointed the trustees of the settlement⁴;
- 42 (4) any additional or larger powers conferred by the trust instrument⁵ relating to the settled land which by virtue of the Settled Land Act 1925 operate and are exercisable as if conferred by the Act on a tenant for life⁶; and
- 43 (5) the name of any person for the time being entitled under the trust instrument to appoint new trustees of the settlement⁷.

These statements or particulars may be incorporated by reference to an existing vesting instrument⁸, but not by reference to a trust instrument or a disentailing deed, except in the case of a settlement subsisting at the commencement of the Settled Land Act 1925⁹, in which case they may be incorporated by reference to that settlement and to any instrument by which land has been conveyed to the uses or upon the trusts of that settlement¹⁰.

As a rule the conveyance or declaration by a settlor in a vesting deed is expressed to be made by him 'as settlor'. This expression implies a covenant for further assurance by the person so conveying in favour of the person or persons to whom the property is conveyed¹¹.

1 For the meaning of 'principal vesting deed' see PARA 689 text to note 9 ante. New settlements can no longer be created: see PARA 688 ante.

2 Settled Land Act 1925 s 5(1)(a). For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 Ibid s 5(1)(b).

4 See ibid s 5(1)(c). For the meaning of 'trustees of the settlement' see PARA 750 note 1 post.

5 For the meaning of 'trust instrument' see PARA 688 note 7 ante.

6 Settled Land Act 1925 s 5(1)(d). As to the extension of statutory powers see PARAS 880-881 post. For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

7 Ibid s 5(1)(e).

8 'Vesting instrument' means a vesting deed, a vesting assent or, where the land affected remains settled land, a vesting order: ibid s 117(1)(xxxii). 'Vesting assent' means the instrument by which a personal representative, after the death of a tenant for life or statutory owner, or the survivor of two or more tenants for life or statutory owners, vests settled land in a person entitled as tenant for life or statutory owner: s 117(1) (xxxii). For the meaning of 'vesting deed' or 'vesting order' see PARA 688 note 6 ante.

9 ie 1 January 1926. 'A settlement subsisting at the commencement of the Settled Land Act 1925' includes a settlement created by virtue of the Act immediately on its commencement: s 117(1)(xxiv).

10 Ibid s 5(2). For forms of principal vesting deeds see s 15, Sch 1 Form 2; and the Law of Property (Miscellaneous Provisions) Act 1994 s 9(1), (2).

11 In respect of dispositions on or before 1 July 1995, the relevant covenant is to be found in the Law of Property Act 1925 s 76(1)(E), Sch 2, Pt V (repealed as regards dispositions of property made after that date by the Law of Property (Miscellaneous Provisions) Act 1994 ss 10(1), 21(2), Sch 2) in terms that the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title under it, execute and do all such lawful assurances and things for further or more perfectly assuring the subject matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, as by them or any of them are reasonably required, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made: see the Law of Property Act 1925 Sch 2 Pt V (repealed). For the purposes of this covenant, 'conveyance' includes, among other things, a vesting instrument: see s 205(1) (ii). In respect of dispositions after 1 July 1995, the relevant covenant is to be found in the Law of Property (Miscellaneous Provisions) Act 1994 s 2 in terms that the person making the disposition will at his own cost do all that he reasonably can to give the person to whom he disposes of the property the title he purports to give, including (1) in relation to a disposition of an interest in land the title to which is registered, doing all that he reasonably can to ensure that the person to whom the disposition is made is entitled to be registered as proprietor with at least the class of title registered immediately before the disposition; and (2) in relation to a disposition of an interest in land the title to which is required to be registered by virtue of the disposition, giving all reasonable assistance fully to establish to the satisfaction of the Chief Land Registrar the right of the person to whom the disposition is made to registration as proprietor: see s 2; and SALE OF LAND vol 42 (Reissue) PARA 338.

UPDATE

690 Form of principal vesting deed

NOTE 10--1925 Act s 15, Sch 1 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/691. Form of subsidiary vesting deed.

691. Form of subsidiary vesting deed.

If, after the creation of a settlement¹ by means of a vesting deed², land³ is acquired with capital money arising under the Settled Land Act 1925⁴, or in exchange for settled land⁵, such land must be conveyed to the tenant for life⁶ or statutory owner⁷ by means of a deed, which is referred to in that Act as a 'subsidiary vesting deed'⁸. It must contain:

- 44 (1) particulars of the last or only principal vesting instrument⁹ affecting land subject to the settlement¹⁰;
- 45 (2) a statement that the land conveyed is to be held upon and subject to the same trusts and powers as the land comprised in such last or only principal vesting instrument¹¹;
- 46 (3) the names of the persons who are the trustees of the settlement¹²; and
- 47 (4) the name of any person for the time being entitled to appoint new trustees of the settlement¹³.

The acquisition of the land will not operate to increase or multiply charges or powers of charging¹⁴.

Similarly, where on a grant of settled land a rentcharge can be¹⁵ and is reserved, the deed by which the rentcharge is reserved is a 'subsidiary vesting deed'¹⁶, and must contain:

- 48 (a) a statement that the rentcharge is vested in the grantor and is subject to the settlement which, immediately before the grant, was subsisting with respect to the land out of which it was reserved¹⁷; and
- 49 (b) particulars of the last or only principal vesting instrument affecting such land¹⁸.

An extended lease granted under the Leasehold Reform Act 1967 to a tenant for life or statutory owner is treated as a subsidiary vesting deed¹⁹.

1 For the meaning of 'settlement' see PARA 678 note 1 ante. It is no longer possible to create settlements under the Settled Land Act 1925: see PARAS 676, 688 ante.

2 For the meaning of 'vesting deed' see PARA 688 note 6 ante. The same principle applies where the original vesting instrument is a vesting assent: see PARA 698 post. For the meaning of 'vesting assent' see PARA 690 note 8 ante.

3 For the meaning of 'land' see PARA 680 note 1 ante.

4 As to capital money see PARA 795 et seq post.

5 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

6 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

7 As to the statutory owner see PARA 766 post.

8 See the Settled Land Act 1925 s 10(1).

9 For the meaning of 'vesting instrument' see PARA 690 note 8 ante.

- 10 Settled Land Act 1925 s 10(2)(a). As to the principal vesting deed see PARAS 689-690 ante.
- 11 Ibid s 10(2)(b).
- 12 Ibid s 10(2)(c). For the meaning of 'trustees of the settlement' see PARA 750 note 1 post.
- 13 Ibid s 10(2)(d). For forms of subsidiary vesting deeds on the acquisition of land see s 15, Sch 1 Form 4; and the Law of Property (Miscellaneous Provisions) Act 1994 s 9(1), (2). A subsidiary vesting deed is also required where a long term is enlarged by a tenant for life or a statutory owner under the Law of Property Act 1925 s 153 (as amended): see PARA 858 post. As to the procedure where the land is registered land see LAND REGISTRATION vol 26 (2004 Reissue) PARA 894 et seq.
- 14 Settled Land Act 1925 s 10(5). See also PARA 704 note 8 post.
- 15 The Rentcharges Act 1977 prohibits, subject to exceptions, the creation of new rentcharges: see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 751.
- 16 See the Settled Land Act 1925 s 10(1).
- 17 Ibid s 10(3)(a).
- 18 Ibid s 10(3)(b).
- 19 See the Leasehold Reform Act 1967 s 6(2); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1416. As to leasehold enfranchisement see PARA 877 post; and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1389 et seq.

UPDATE

691 Form of subsidiary vesting deed

NOTE 13--Settled Land Act 1925 s 15, Sch 1 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/692.
Effect of errors in vesting deed.

692. Effect of errors in vesting deed.

Neither a principal vesting deed¹ nor a subsidiary vesting deed² will be invalidated by reason only of any error in any of the statements or particulars which the Settled Land Act 1925 requires to be contained in it³. However, a vesting deed will be invalid if it does not comply with the requirements of that Act; for example, if a compound settlement⁴ exists, the vesting deed will be invalid if it does not give effect to the compound settlement or if it is not executed by the trustees of the compound settlement⁵.

1 For the meaning of 'principal vesting deed' see PARA 689 text to note 9 ante.

2 For the meaning of 'subsidiary vesting deed' see PARA 691 text to notes 8, 16 ante.

3 Settled Land Act 1925 ss 5(3), 10(4).

4 As to the meaning of 'compound settlement' see PARA 681 text and note 3 ante.

5 *Re Cayley and Evans' Contract* [1930] 2 Ch 143. See, however, *Re Curwen, Curwen v Graham* [1931] 2 Ch 341, where a vesting deed to give effect to a compound settlement was held to be valid although the trustees of the compound settlement were described in it merely as being the trustees of the earliest of the documents which constituted the compound settlement. As to trustees of compound settlements see PARA 754 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/693. Settlements of personal estates to be invested in land.

693. Settlements of personal estates to be invested in land.

In the case of an instrument subsisting on 1 January 1926, or made or coming into operation after that date, by virtue of which any money or securities¹ were or are liable, by statute or under a trust or direction contained in the instrument, to be invested in the purchase of land² to be conveyed so as to become settled land³, but on that date or when that instrument was made or came into operation, as the case may be, there was no land in respect of which a principal vesting deed could be executed, the first deed thereafter by which any land was acquired is regarded as a principal vesting deed⁴ and must be framed accordingly⁵. A vesting deed need not be executed in respect of money or securities⁶.

1 'Securities' include stocks, funds and shares: Settled Land Act 1925 s 117(1)(xxiii).

2 For the meaning of 'land' see PARA 680 note 1 ante.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 For the meaning of 'principal vesting deed' see PARA 689 text to note 9 ante.

5 See the Settled Land Act 1925 s 10(1) proviso. See also *Re Draycott Settled Estate* [1928] Ch 371. As to the form of a principal vesting deed see PARA 690 ante.

6 *Re Clayton's Settled Estates* [1926] Ch 279.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/694.
Form of trust instrument.

694. Form of trust instrument.

The trust instrument¹ must:

- 50 (1) declare the trusts affecting the settled land²;
- 51 (2) appoint or constitute trustees of the settlement³;
- 52 (3) contain the power, if any, to appoint new trustees of the settlement⁴;
- 53 (4) set out, either expressly or by reference, any powers intended to be conferred by the settlement in extension of those conferred by the Settled Land Act 1925⁵; and
- 54 (5) bear any ad valorem stamp duty which was payable (whether by virtue of the vesting deed or otherwise) in respect of the settlement⁶.

1 For the meaning of 'trust instrument' see PARA 688 note 7 ante. New settlements can no longer be created: see PARA 688 ante.

2 Settled Land Act 1925 s 4(3)(a). As to the usual limitations see PARA 715 et seq post. For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 Ibid s 4(3)(b). For the meaning of 'trustees of the settlement' see PARA 750 note 1 post.

4 Ibid s 4(3)(c). As to the appointment of trustees see PARA 756 post.

5 Ibid s 4(3)(d). As to the statutory powers see PARA 775 et seq post.

6 Ibid s 4(3)(e). For forms of trust instruments see s 15, Sch 1 Form 3; and the Law of Property (Miscellaneous Provisions) Act 1994 s 9(1), (2). As to the stamp duty on settlements see PARA 623 ante; and see generally STAMP DUTIES AND STAMP DUTY RESERVE TAX.

UPDATE

694 Form of trust instrument

NOTE 6--1925 Act s 15, Sch 1 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/695. Instruments deemed to be trust instruments.

695. Instruments deemed to be trust instruments.

The following settlements and instruments are for the purposes of the Settled Land Act 1925 deemed to be trust instruments¹:

- 55 (1) an instrument² executed or, in the case of a will³, coming into operation after 1925 which by virtue of that Act is deemed to be a settlement⁴;
- 56 (2) a settlement which by virtue of that Act is deemed to have been made by any person after 1925⁵;
- 57 (3) an instrument inter vivos intended to create a settlement of a legal estate⁶ in land which is executed after 1925 and does not comply with the requirements of that Act with respect to the method of effecting such a settlement⁷; and
- 58 (4) a settlement made after 1925 (including a settlement by the will of a person who dies after 1925) of (a) an equitable interest in land which is capable, when in possession, of subsisting at law⁸; or (b) an entailed interest⁹; or (c) a base or determinable fee¹⁰ or any corresponding interest in leasehold land¹¹, but only if and when the interest settled takes effect free from all equitable interests and powers under every prior settlement, if any¹².

1 Settled Land Act 1925 s 9(1). Any reference to a trust instrument in the Settled Land Act 1925 applies to the settlements and instruments set out in heads (1) to (4) in the text: see s 9(1). For the meaning of 'trust instrument' see PARA 688 note 7 ante.

2 For the meaning of 'instrument' see PARA 688 note 7 ante.

3 'Will' includes codicil: Settled Land Act 1925 s 117(1)(xxxiii). See generally WILLS.

4 See ibid s 9(1)(i). As to land deemed to be the subject of a settlement see PARA 679 ante. For the meaning of 'settlement' see PARA 678 note 1 ante.

5 See ibid s 9(1)(ii). This provision covers the following cases: (1) if a child (see PARA 665 note 13 ante) is beneficially entitled to land for an estate in fee simple or for a term of years absolute, and by reason of an intestacy or otherwise there is no instrument under which the interest of the child arises or is acquired, a settlement is deemed to have been made by the intestate, or by the person whose interest the child has acquired (see s 1(2); and PARA 678 ante); (2) if dower has been assigned by metes and bounds, the letters of administration or probate granted in respect of the estate of the husband of the dowress is deemed a settlement made by the husband (see s 1(3); and PARA 679 ante); and (3) if the estate or interest of a tenant by the courtesy is deemed to be an estate or interest arising under a settlement by his wife (see s 20(3); and PARA 679 ante).

6 For the meaning of 'legal estate' see PARA 678 note 13 ante.

7 See the Settled Land Act 1925 s 9(1)(iii). As to such requirements see PARA 688 ante.

8 See ibid s 9(1)(iv)(a). 'Equitable interests' mean all other interests and charges in or over land or in the proceeds of sale of it other than an estate, interest or charge in or over land (subsisting or created at law) which is by statute authorised to subsist or be created at law; and an equitable interest 'capable of subsisting at law' means such an equitable interest as could validly subsist at law, if clothed with the legal estate: s 117(1)(xi). As to what estates, interests and charges are capable of subsisting or being created at law see the Law of Property Act 1925 s 1 (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 45 et seq.

9 Settled Land Act 1925 s 9(1)(iv)(b). For the meaning of 'entailed interest' see PARA 678 note 11 ante.

10 For the meaning of 'determinable fee' see PARA 678 note 15 ante. As to what is a 'base fee' see REAL PROPERTY vol 39(2) (Reissue) PARAS 134-139.

11 Settled Land Act 1925 s 9(1)(iv)(c).

12 *Ibid* s 9(1)(iv).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/696. Vesting deed to be executed to give effect to a trust instrument.

696. Vesting deed to be executed to give effect to a trust instrument.

As soon as practicable after a settlement¹, or an instrument² which for the purposes of the Settled Land Act 1925 is deemed to be a trust instrument³, took effect as such⁴, the trustees of the settlement⁵ could, and on the request of the tenant for life⁶ or statutory owner⁷ had to, execute a principal vesting deed⁸ containing the proper statements and particulars, declaring that the legal estate⁹ in the settled land was to vest or was vested in the person or persons named in it, being the tenant for life or statutory owner, including the trustees themselves if they were the statutory owners, and, unless the legal estate was already so vested, this deed operated to convey or vest the legal estate in the settled land to or in such person or persons, and, if more than one, as joint tenants¹⁰.

1 For the meaning of 'settlement' see PARA 678 note 1 ante.

2 For the meaning of 'instrument' see PARA 688 note 7 ante.

3 For the meaning of 'trust instrument' see PARA 688 note 7 ante. As to instruments deemed to be trust instruments see PARA 695 ante.

4 New settlements can no longer be created: see PARA 688 ante.

5 For the meaning of 'trustees of the settlement' see PARA 750 note 1 post. As to the position where there are no trustees see PARA 699 post.

6 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

7 As to the statutory owner see PARA 766 post.

8 For the meaning of 'principal vesting deed' see PARA 689 text to note 9 ante. See further PARAS 689-690 ante.

9 For the meaning of 'legal estate' see PARA 678 note 13 ante.

10 See the Settled Land Act 1925 s 9(2); and the Law of Property Act 1925 s 9(1) (see REAL PROPERTY vol 39(2) (Reissue) PARA 246).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/697. Settlements created by will.

697. Settlements created by will.

Where a settlement¹ was created by the will² of an estate owner³ who died after 1925, the will is a trust instrument⁴ for the purposes of the Settled Land Act 1925⁵, and the personal representatives⁶ of the testator hold the settled land⁷ upon trust, if and when required so to do, to convey it to the person who, under the will or by virtue of the Settled Land Act 1925, is the tenant for life⁸ or statutory owner⁹, and, if more than one, as joint tenants¹⁰.

1 For the meaning of 'settlement' see PARA 678 note 1 ante.

2 For the meaning of 'will' see PARA 695 note 3 ante. New settlements can no longer be created: see PARA 688 ante.

3 'Estate owner' means the owner of a legal estate: Settled Land Act 1925 s 117(1)(xi). For the meaning of 'legal estate' see PARA 678 note 13 ante.

4 For the meaning of 'trust instrument' see PARA 688 note 7 ante.

5 See the Settled Land Act 1925 s 6(a).

6 'Personal representative' means the executor, original or by representation, or administrator, for the time being of a deceased person, and where there are special personal representatives for the purposes of settled land means those personal representatives: *ibid* s 117(1)(xviii). As to special personal representatives see EXECUTORS AND ADMINISTRATORS.

7 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

8 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

9 As to the statutory owner see PARA 766 post.

10 Settled Land Act 1925 s 6(b). This may be done by a vesting assent: see PARA 698 post. As to joint tenancies see REAL PROPERTY vol 39(2) (Reissue) PARA 190 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/698. Vesting instruments on change of ownership.

698. Vesting instruments on change of ownership.

A principal vesting instrument¹ is also necessary on a change of ownership, which will occur in any of the following cases:

- 59 (1) if on the death of a tenant for life² or statutory owner³, or of the survivor of two or more tenants for life or statutory owners, in whom the settled land was vested, the land remains settled land⁴;
- 60 (2) if a person by reason of attaining full age becomes a tenant for life for the purposes of the Settled Land Act 1925 of settled land, either alone⁵ or jointly with any other person or persons⁶; and
- 61 (3) if by reason of forfeiture, surrender or otherwise the estate owner⁷ of the settled land ceases to have the statutory powers of a tenant for life and the land remains settled land⁸.

In any such case the person or persons in whom the settled land is vested, including the personal representatives⁹ of a deceased tenant for life or statutory owner, is or are bound to convey the settled land, if and when required so to do, to the person who under the trust instrument or by virtue of the Settled Land Act 1925 becomes the tenant for life or statutory owner, and, if more than one, as joint tenants¹⁰.

If in any case in which settled land ought to be conveyed to a tenant for life or statutory owner the land is vested in personal representatives, they may execute either a principal vesting deed or a vesting assent¹¹. Such vesting assent, which operates as a conveyance¹², must be in writing signed by them and must contain the like statements and particulars as are required by the Settled Land Act 1925 in the case of a principal vesting deed¹³.

Every vesting instrument executed for the purpose of giving effect to a settlement or instrument which is deemed to be a trust instrument¹⁴, or to a settlement created by a will¹⁵, or on a change of ownership, must be made at the cost of the trust estate¹⁶.

The obligation to execute any such vesting instrument is subject and without prejudice (a) where the settlement is created by a will, to the rights and powers of the personal representatives for the purposes of administration¹⁷; and (b) in any case, to the person on whom the obligation is imposed being satisfied that provision has been or will be made for the payment of any unpaid death duties¹⁸ in respect of the land or any interest in it for which he is accountable, and any interest and costs in respect of such duties, or that he is otherwise effectually indemnified against such duties, interest and costs¹⁹. A conveyance, if made by deed (but not a vesting assent) may contain a reservation to the person by whom it is made of a term of years absolute²⁰ in the settled land, upon trusts for indemnifying him against any unpaid death duties in respect of the settled land or any interest in it, and any interest and costs in respect of such duties²¹. Furthermore, the obligation does not affect the right of personal representatives to transfer or create such legal estates to take effect in priority to the vesting deed or assent as may be required for giving effect to the obligations imposed on them by statute²², or any right which a person entitled to an equitable charge for securing money actually raised, and affecting the whole estate the subject of the settlement, may have to require effect to be given to it by a legal mortgage²³ before the execution of a vesting deed or assent²⁴.

- 1 'Principal vesting instrument' includes any vesting instrument other than a subsidiary vesting deed: Settled Land Act 1925 s 117(1)(xxxi). For the meaning of 'vesting instrument' see PARA 690 note 8 ante. For the meaning of 'subsidiary vesting deed' see PARA 691 text to notes 8, 16 ante.
- 2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.
- 3 As to the statutory owner see PARA 766 post.
- 4 See the Settled Land Act 1925 s 7(1). As to the duration of settlements for the purposes of that Act see PARA 708 post. For the meaning of 'settled land' see PARA 680 text to note 2 ante; and for the meaning of 'land' see PARA 680 note 1 ante.
- 5 See *ibid* s 7(2).
- 6 See *ibid* s 7(3). As to the age of majority see PARA 605 note 1 ante.
- 7 For the meaning of 'estate owner' see PARA 697 note 2 ante.
- 8 See the Settled Land Act 1925 s 7(4). See also *Re Shawdon Estates Settlement* [1930] 2 Ch 1, CA. For the purposes of determining, where the estate owner of any settled land is bankrupt, whether the legal estate in the settled land is comprised in or is capable of being claimed for, the bankrupt's estate, the legal estate in the settled land is deemed not to vest in the estate owner unless and until the estate owner becomes absolutely and beneficially entitled to the settled land free from all limitations, powers, and charges taking effect under the settlement: Settled Land Act 1925 s 103 (amended by the Insolvency Act 1985 s 235(1), Sch 8 para 3). See also BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 429. As to when the powers of the tenant for life cease see PARAS 684 ante, 778 post.
- 9 For the meaning of 'personal representative' see PARA 697 note 6 ante.
- 10 See the Settled Land Act 1925 s 7(1)-(4). As to the procedure where the land is registered land see LAND REGISTRATION vol 26 (2004 Reissue) PARA 894 et seq.
- 11 See *ibid* ss 8(4), 9(4). For the meaning of 'vesting assent' see PARA 690 note 8 ante. That definition is not exhaustive, as a personal representative under a will which creates a settlement can execute a vesting assent: see PARA 697 ante.
- 12 See *ibid* s 8(1). 'Conveyance' includes a mortgage, charge by way of legal mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest in it by any instrument, except a will, and 'convey' has a corresponding meaning: s 117(1)(v).
- 13 See *ibid* ss 8(1), 9(4); Law of Property Act 1925 s 9(1); and PARA 695 ante. For a form of vesting assent see the Settled Land Act 1925 s 15, Sch 1 Form 5; and the Law of Property (Miscellaneous Provisions) Act 1994 s 9(1), (2).
- 14 See PARA 695 ante. For the meaning of 'settlement' see PARA 678 note 1 ante; for the meaning of 'instrument' see PARA 695 note 2 ante; and for the meaning of 'trust instrument' see PARA 688 note 7 ante.
- 15 See PARA 697 ante. For the meaning of 'will' see PARA 695 note 3 ante.
- 16 See the Settled Land Act 1925 ss 8(2), 9(4).
- 17 *Ibid* ss 8(3)(a), 9(4). As to the rights and powers of personal representatives see EXECUTORS AND ADMINISTRATORS.
- 18 'Death duty' means estate duty and every other duty leviable or payable on death: *ibid* s 117(1)(iii) (amended by the Finance Act 1949 s 52(10), Sch 11 Pt IV). This includes inheritance tax: see INHERITANCE TAXATION vol 24 (Reissue) PARA 401 et seq.
- 19 Settled Land Act 1925 ss 8(3)(b), 9(4). As to the liability of personal representatives or other estate owners see INHERITANCE TAXATION vol 24 (Reissue) PARA 636.
- 20 For the meaning of 'term of years absolute' see PARA 678 note 13 ante.
- 21 See the Settled Land Act 1925 ss 8(6), 9(4).
- 22 See *ibid* ss 8(5), 9(4). See also PARA 712 post. As to the obligations imposed on personal representatives by statute see EXECUTORS AND ADMINISTRATORS.

23 'Legal mortgage' means a mortgage by demise or sub-demise or a charge by way of legal mortgage, and 'legal mortgagee' has a corresponding meaning: *ibid* s 117(1)(xi).

24 See *ibid* ss 8(7), 9(4). As to equitable mortgages and charges see MORTGAGE vol 77 (2010) PARA 238 et seq. As to creating a legal mortgage to give effect to an equitable charge see PARA 767 post.

UPDATE

698 Vesting instruments on change of ownership

NOTE 13--Settled Land Act 1925 s 15, Sch 1 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/699.
Power of the court to make vesting orders.

699. Power of the court to make vesting orders.

If, when a vesting deed¹ or vesting assent² ought to be executed, any person who ought to execute it, or in whom the settled land³ is wrongly vested, refuses or neglects to execute the requisite vesting deed or vesting assent within one month after demand in writing⁴, or any such person is outside the United Kingdom⁵, or cannot be found, or it is not known whether he is alive or dead⁶, or for any reason the court⁷ is satisfied that the vesting deed or vesting assent cannot be executed, or cannot be executed without undue delay or expense⁸, the court, on the application of any person interested, may make an order vesting the settled land in the tenant for life⁹ or statutory owner¹⁰ or person, if any, of full age absolutely entitled (whether beneficially or as personal representative or trustee of land or otherwise) and, if the land remains settled land, the provisions of the Settled Land Act 1925 relating to a principal vesting deed or a subsidiary vesting deed¹¹, as the case may be, apply to any order so made and every such order must contain the like statements and particulars¹².

If a vesting deed or assent ought to be executed by the trustees of the settlement¹³, but there are no such trustees, then (in default of a person able and willing to appoint such trustees) an application must be made to the court for the appointment of the trustees¹⁴.

- 1 For the meaning of 'vesting deed' see PARA 688 note 6 ante.
- 2 For the meaning of 'vesting assent' see PARA 690 note 8 ante.
- 3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.
- 4 See the Settled Land Act 1925 s 12(1)(a). See also *Re Shawdon Estates Settlement* [1930] 2 Ch 1, CA.
- 5 'United Kingdom' means Great Britain and Northern Ireland: Settled Land Act 1925 s 117(1)(xxxii). 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706 preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.
- 6 Settled Land Act 1925 s 12(1)(b).
- 7 As to the court see PARA 792 post.
- 8 Settled Land Act 1925 s 12(1)(c).
- 9 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.
- 10 As to the statutory owner see PARA 766 post.
- 11 See PARAS 690-691 ante.
- 12 See the Settled Land Act 1925 s 12(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2). As to the statutory owner see PARA 766 post. The provisions of the Trustee Act 1925 relating to vesting orders and orders appointing a person to convey (see ss 44-56 (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 869 et seq) apply to all vesting orders authorised to be made by the Settled Land Act 1925: s 113(9).
- 13 For the meaning of 'trustees of the settlement' see PARA 750 note 1 post.
- 14 See the Settled Land Act 1925 s 9(3). As to applications to the court see PARA 792 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/700. Vesting instruments where a settlement was subsisting on 1 January 1926.

700. Vesting instruments where a settlement was subsisting on 1 January 1926.

Where a settlement of a legal estate¹ in land (not held at law or in equity in undivided shares vested in possession²) was subsisting on 1 January 1926³, the legal estate in the land became vested on that day in the tenant for life⁴ or statutory owner⁵ and the settlement became a trust instrument for the purposes of the Settled Land Act 1925⁶. That Act contains provisions similar to those⁷ under which the tenant for life or statutory owner became entitled to have a principal vesting deed or vesting assent (containing the proper statements and particulars⁸) executed in his favour at the cost of the trust estate⁹. A like power was conferred on the tenant for life or statutory owner or any other person interested to apply to the court for the appointment of trustees of the settlement, if none existed¹⁰, and for a vesting order if default was made in executing a principal vesting deed¹¹. There were also similar savings in favour of personal representatives and any person entitled to an equitable charge for securing money actually raised¹².

All the estates, interests and powers limited by the settlement, other than any legal estate or interest vested in a mortgagee or other purchaser for money or money's worth, which were not by statute otherwise converted into equitable interests or powers¹³, took effect, as from the date of the principal vesting deed or order, only in equity¹⁴.

1 For the meaning of 'legal estate' see PARA 678 note 13 ante.

2 Settled Land Act 1925 s 37, Sch 2 para 1(5). As to land held in undivided shares see REAL PROPERTY vol 39(2) (Reissue) PARA 189 et seq.

3 See PARA 690 note 8 ante.

4 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

5 As to the statutory owner see PARA 766 post.

6 See the Settled Land Act 1925 Sch 2 para 1(1); and the Law of Property Act 1925 s 39, Sch 1 Pt II paras 2, 5, 6(c) (see REAL PROPERTY vol 39(2) (Reissue) PARA 52). For the meaning of 'trust instrument' see PARA 688 note 7 ante.

7 In the Settled Land Act 1925 ss 6, 8(1), (2), (4), 9(2): see PARAS 696, 698 ante.

8 See PARAS 690, 698 ante. For the meaning of 'principal vesting deed' see PARA 689 text to note 9 ante; and for the meaning of 'vesting assent' see PARA 690 note 8 ante.

9 See the Settled Land Act 1925 Sch 2 paras 1(2), 2(1), (2), (4). For forms see s 15, Sch 1 Forms 1, 5; and the Law of Property (Miscellaneous Provisions) Act 1994 s 9(1), (2).

10 See the Settled Land Act 1925 Sch 2 para 1(3); and PARA 699 ante. For the meaning of 'trustees of the settlement' see PARA 750 note 1 post.

11 See ibid Sch 2 para 1(4); and PARA 699 ante.

12 See ibid Sch 2 para 2(3), (5)-(7); and PARA 698 ante. For the meaning of 'personal representative' see PARA 697 note 6 ante.

13 See the Law of Property Act 1925 s 1(1)-(3); and REAL PROPERTY vol 39(2) (Reissue) PARA 43 et seq.

14 Settled Land Act 1925 Sch 2 para 1(6) (amended by the Law of Property (Amendment) Act 1926 s 7, Schedule).

UPDATE

700 Vesting instruments where a settlement was subsisting on 1 January 1926

NOTE 9--1925 Act s 15, Sch 1 repealed: Statute Law (Repeals) Act 2004.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/701. Vesting not to operate as breach of covenant or forfeiture.

701. Vesting not to operate as breach of covenant or forfeiture.

Any vesting effected under the powers conferred by the Settled Land Act 1925 in relation to settled land¹ does not operate as a breach of a covenant or condition against alienation or give rise to a forfeiture².

1 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

2 Settled Land Act 1925 s 14(1). This provision applies to any settlement subsisting on 1 January 1926 (see PARA 700 ante) and also where a vesting instrument is executed for the purposes of giving effect to any instrument which is deemed to be a trust instrument (see PARA 695 ante). However, it will not avoid the necessity of obtaining a licence where there is a covenant or condition against alienation, when a settlement is made, at any rate if the vesting deed is executed before the trust instrument. It is, however, arguable that it enables a settlor to make a settlement after 1925 without obtaining a licence, by executing an instrument which is deemed to be a trust instrument (eg a declaration of trust) to which effect can then be given by a vesting instrument. The effect of this provision is far from clear and in practice it would always be wise to apply for a licence. It is thought that a licence is unnecessary when a vesting instrument is executed on a change of ownership (see PARA 698 ante), but this also is open to doubt. As to covenants and conditions against alienation see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 481 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/702. Dispositions not effective until a vesting instrument is executed.

702. Dispositions not effective until a vesting instrument is executed.

Where a tenant for life¹ or statutory owner² has become entitled to have a principal vesting deed³ or a vesting assent⁴ executed in his favour then, except in specific cases⁵, until a vesting instrument⁶ is executed or made pursuant to the Settled Land Act 1925 in respect of the settled land⁷, any purported disposition⁸ of it inter vivos by any person, other than a personal representative⁹ (not being a disposition which he has power to make in right of his equitable interests¹⁰ or powers under a trust instrument¹¹), will not take effect except in favour of a purchaser¹² of a legal estate¹³ without notice of such tenant for life or statutory owner having become so entitled, but, except as already stated, will operate only as a contract for valuable consideration to carry out the transaction after the requisite vesting instrument has been executed or made, and a purchaser of a legal estate will not be concerned with such disposition unless the contract is registered as a land charge¹⁴. This provision does not affect the creation or transfer of a legal estate by virtue of a court order or an order of the Minister of Agriculture, Fisheries and Food¹⁵ or other competent authority¹⁶. However, if before a vesting instrument is executed the settlement comes to an end, no vesting instrument need, or can, be executed, and the restrictions on dispositions imposed by these provisions cease to apply to the land which had been subject to the settlement¹⁷.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

2 As to the statutory owner see PARA 766 post.

3 For the meaning of 'principal vesting deed' see PARA 689 text to note 9 ante.

4 For the meaning of 'vesting assent' see PARA 690 note 8 ante.

5 See PARA 703 post.

6 For the meaning of 'vesting instrument' see PARA 690 note 8 ante.

7 This means a vesting instrument which complies with the provisions of the Settled Land Act 1925: *Re Cayley and Evans' Contract* [1930] 2 Ch 143. For the meaning of 'settled land' see PARA 680 text to note 2 ante.

8 For the meaning of 'disposition' see PARA 685 note 14 ante. The expression here means a disposition under the Settled Land Act 1925: see s 112(2); and PARA 685 note 14 ante. See also *Re Alefounier's Will Trusts, Adnams v Alefounier* [1927] 1 Ch 360. 'Lease' includes the lease of an easement over the park or grounds: see *Dowager Duchess of Sutherland v Duke of Sutherland* [1893] 3 Ch 169 at 194; *Pease v Courtney* [1904] 2 Ch 503 at 510.

9 For the meaning of 'personal representative' see PARA 697 note 6 ante.

10 For the meaning of 'equitable interests' see PARA 695 note 8 ante.

11 For the meaning of 'trust instrument' see PARA 688 note 7 ante.

12 'Purchaser' means a purchaser in good faith for value, and includes a lessee, mortgagee or other person who in good faith acquires an interest in settled land for value; and in reference to a legal estate includes a chargee by way of legal mortgage: Settled Land Act 1925 s 117(1)(xxi).

13 For the meaning of 'legal estate' see PARA 678 note 13 ante. As to legal estates in land see the Law of Property Act 1925 s 1; and REAL PROPERTY vol 39(2) (Reissue) PARA 91 et seq.

14 Settled Land Act 1925 s 13 (amended by the Law of Property (Amendment) Act 1926 ss 6, 7, Schedule). As to the registration of land charges see LAND CHARGES vol 26 (2004 Reissue) PARA 601 et seq. As to the protection of rights affecting registered land see LAND REGISTRATION vol 26 (2004 Reissue) PARA 992 et seq.

15 As to the Minister of Agriculture, Fisheries and Food see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

16 Settled Land Act 1925 s 13 (as amended: see note 14 supra); s 117(1)(xvi) (amended by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554).

17 *Re Alefounder's Will Trusts, Adnams v Alefounder* [1927] 1 Ch 360. As to the duration of settlements see PARA 708 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/703.
When a vesting instrument is unnecessary.

703. When a vesting instrument is unnecessary.

In the following cases settled land¹ can be dealt with by an estate owner even if no vesting deed has been executed²:

- 62 (1) a person beneficially entitled to land³ for an estate in fee simple or for a term of years absolute⁴ subject to any estates, interests, charges or powers of charging subsisting or capable of being exercised under a settlement⁵ may convey or create a legal estate⁶ subject to a prior interest⁷ as if the land had not been settled land⁸; and
- 63 (2) where (a) a legal estate has been conveyed or created under the power set out in head (1) above, or under the statutory procedure for the enforcement of equitable interests and powers against estate owners⁹, subject to any prior interest¹⁰; or (b) before 1 January 1926, land was conveyed to a purchaser¹¹ for money or money's worth subject to any prior interest, whether or not on the purchase the land was expressed to be exonerated from, or the grantor agreed to indemnify the purchaser against, such prior interest¹², the estate owner¹³ for the time being of the land subject to that prior interest may, notwithstanding anything in the Settled Land Act 1925, but without prejudice to any power by which that prior interest is capable of being overreached, convey or create a legal estate subject to that prior interest as if the instrument¹⁴ creating the prior interest was not an instrument or one of the instruments constituting a settlement of the land¹⁵.

1 For the meaning of 'settled land' see PARA 680 text to note 2 ante; definition applied by the Law of Property (Amendment) Act 1926 s 8(1).

2 See *ibid* s 1.

3 For the meaning of 'land' see PARA 680 note 1 ante.

4 For the meaning of 'term of years absolute' see PARA 678 note 13 ante.

5 For the meaning of 'settlement' see PARA 678 note 1 ante.

6 For the meaning of 'legal estate' see PARA 678 note 13 ante; definition applied by the Law of Property (Amendment) Act 1926 s 8(1).

7 'Interest' means an estate, interest, charge or power of charging subsisting, or capable of arising or of being exercised under a settlement: *ibid* s 1(3).

8 *Ibid* s 1(1). Such a person has the powers of a tenant for life under the Settled Land Act 1925 s 20(1)(ix); see PARA 762 post.

9 Ie under *ibid* s 16 (see PARAS 767-769 post); see the Law of Property (Amendment) Act 1926 s 1(2)(a).

10 *Ibid* s 1(2)(a).

11 For the meaning of 'purchaser' see PARA 702 note 12 ante; definition applied by *ibid* s 8(1).

12 *Ibid* s 1(2)(b).

13 This power can be exercised by an absolute owner, tenant for life or statutory owner, trustee for sale or personal representative: see *Re Gaul and Houlston's Contract* [1928] Ch 689 at 691, CA, per Clauson J.

14 Where a prior interest arises under the exercise of a power, 'instrument' includes both the instrument conferring the power and the instrument exercising it: Law of Property (Amendment) Act 1926 s 1(3).

15 Ibid s 1(2).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/704. Vesting deed on acquisition of land.

704. Vesting deed on acquisition of land.

Where land¹ is acquired with capital money arising under the Settled Land Act 1925², the land must be conveyed to the tenant for life³ or statutory owner⁴, and the conveyance must be framed as a subsidiary vesting deed⁵, unless prior to the execution of the conveyance there has not been any land in respect of which a principal vesting deed⁶ was capable of being executed, in which case the conveyance must be framed as a principal vesting deed⁷. The acquisition of the land does not operate to increase or multiply charges or powers of charging⁸.

Where (1) mortgage money⁹ is capital money for the purposes of the Settled Land Act 1925; (2) land (other than any forming the whole or part of any property vested in trustees by way of security which is discharged from the right of redemption)¹⁰ is, or is deemed to be, subject to the settlement¹¹; and (3) the tenant for life or statutory owner requires the trustees to execute with respect to land forming the whole or part of that property a vesting deed such as would have been required in relation to the land if it had been acquired on a purchase with capital money, the trustees must execute such a vesting deed¹².

1 For the meaning of 'land' see PARA 680 note 1 ante.

2 For the meaning of 'capital money arising under the Act' see PARA 795 post.

3 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

4 As to the statutory owner see PARA 766 post.

5 For the meaning of 'conveyance' see PARA 698 note 12 ante. As to the form of a subsidiary vesting deed see PARA 691 ante.

6 For the meaning of 'principal vesting deed' see PARA 689 text to note 9 ante. As to the form of a principal vesting deed see PARA 690 ante.

7 See the Settled Land Act 1925 s 10(1); and PARAS 691, 693 ante. See also *Re Draycott Settled Estate* [1928] Ch 371. As to the procedure where the land is registered land see LAND REGISTRATION vol 26 (2004 Reissue) PARA 894 et seq. As to when there is no relevant property in a settlement see PARA 676 text to notes 8-9 ante.

8 Settled Land Act 1925 s 10(5). It is a general rule of construction that the court does not impute an intention to multiply charges, or trusts in the nature of charges, upon a trust estate in the absence of anything in the particular document to be construed to show such an intention: see *Trew v Perpetual Trustee Co* [1895] AC 264, PC; and PARA 723 post.

9 'Mortgage money' means money or money's worth secured by a mortgage; and 'mortgage' includes any charge or lien on any property for securing money or money's worth: Law of Property Act 1925 s 205(1)(xvi). See further MORTGAGE vol 77 (2010) PARA 101.

10 ie land which forms the whole or part of the property mentioned in ibid s 31(1) (as amended) (see TRUSTS vol 48 (2007 Reissue) PARA 1028): see s 31(4) (as substituted: see note 12 infra).

11 For the meaning of 'settlement' see PARA 678 note 1 ante; definition applied by ibid s 205(1)(xxvi).

12 See ibid s 31(4) (substituted by the Trusts of Land and Appointment of Trustees Act 1996 s 5(1), Sch 2 para 1(5)). If a subsidiary vesting deed is not so required, the property must be held on trust: see the Settled Land Act 1925 s 31(1) (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1028.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/705. Vesting deed by owner entitled subject to equitable interests.

705. Vesting deed by owner entitled subject to equitable interests.

Notwithstanding any stipulation to the contrary, a person of full age who is beneficially entitled in possession to a legal estate¹ subject to any equitable interests² or powers, for the purpose of overreaching such interests or powers, may by deed, which has effect as a principal vesting deed³, declare that the legal estate is vested in him on trust to give effect to all equitable interests and powers affecting the legal estate⁴. The deed must be executed by two or more individuals approved or appointed by the court⁵ or a trust corporation⁶, who must be stated to be trustees of the settlement for the purposes of the Settled Land Act 1925⁷.

Then, so long as any of the equitable interests and powers are subsisting:

- 64 (1) the person so entitled and each of his successors in title being an estate owner⁸ will have the powers of a tenant for life⁹ and the land¹⁰ will be deemed to be settled land¹¹;
- 65 (2) the instrument¹², if any, under which his estate arises or is acquired, and the instrument, if any, under which the equitable interests or powers are subsisting or capable of taking effect, will be deemed to be the trust instrument¹³;
- 66 (3) the persons stated in the principal vesting deed to be the trustees of the settlement¹⁴ for the purposes of the Settled Land Act 1925 will also be the trustees of the trust instrument for those purposes¹⁵; and
- 67 (4) capital money arising on any disposition¹⁶ of the land must be paid to or by the direction of the trustees of the settlement or into court¹⁷, and will be applicable towards discharging or providing for payment in due order of any principal money payable in respect of such interests or charges as are overreached by such disposition, and until so applied must be invested or applied as capital money under the trust instrument¹⁸, and its income must be applied as the income of that capital money, and is liable for keeping down in due order any annual or periodical sum which may be overreached by the disposition¹⁹.

1 For the meaning of 'legal estate' see PARA 678 note 13 ante. This provision applies to land which is not the subject of a settlement within the Settled Land Act 1925: see PARA 675 et seq ante. As to the age of majority see PARA 605 note 1 ante.

2 For the meaning of 'equitable interests' see PARA 695 note 8 ante. As to the equitable interests which are excepted from the operation of this provision see PARA 706 post.

3 Ie within the meaning of the Settled Land Act 1925 (see PARAS 688-690 ante): see s 21(1).

4 Ibid s 21(1), which has effect notwithstanding any stipulation to the contrary.

5 As to the court see PARA 792 post. The approval of trustees need not be an ad hoc approval for the purposes of sale: *Re Leigh's Settled Estates (No 2)* [1927] 2 Ch 13.

6 'Trust corporation' means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee or entitled by rules made under the Public Trustee Act 1906 s 4(3) (see TRUSTS vol 48 (2007 Reissue) PARA 766 et seq), to act as custodian trustee, and includes the Church of England Pensions Board (see ECCLESIASTICAL LAW) and certain other officials and persons: see the Settled Land Act 1925 s 117(1) (xxx); the Trustee Act 1925 s 68(1) PARA (18); the Law of Property Act 1925 s 205(1)(xxviii); the Law of Property (Amendment) Act 1926 s 3 (as amended); the Clergy Pensions Measure 1961 s 31; and TRUSTS vol 48 (2007 Reissue) PARA 798.

7 Settled Land Act 1925 s 21(1). Examples of equitable interests which can be overreached under these provisions are: (1) any rentcharge for the life of any person, or any less period, or any capital, annual or periodical sums for the portions, advancement, maintenance or otherwise for the benefit of any person charged otherwise than voluntarily or in consideration of marriage or by way of family arrangement (cf s 1(1)(v); see PARA 678 ante); (2) an annuity within the Land Charges Act 1972 (see s 17(1); and LAND CHARGES vol 26 (2004 Reissue) PARA 667 et seq); (3) a limited owner's charge within that Act (see s 2(4)(ii); and LAND CHARGES vol 26 (2004 Reissue) PARA 630); and (4) a general equitable charge within the Land Charges Act 1972 (see s 2(4)(iii); and LAND CHARGES vol 26 (2004 Reissue) PARA 631). These include land charges registered under corresponding repealed provisions of the Land Charges Act 1925: see the Land Charges Act 1972 s 18(5), (6); and LAND CHARGES vol 26 (2004 Reissue) PARA 632. As to overreaching powers see REAL PROPERTY vol 39(2) (Reissue) PARA 247 et seq.

8 For the meaning of 'estate owner' see PARA 697 note 2 ante.

9 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post. By virtue of the Settled Land Act 1925 s 72, the estate owner will be able to overreach the equitable interests: see PARA 874 post.

10 For the meaning of 'land' see PARA 680 note 1 ante.

11 Settled Land Act 1925 s 21(1)(a). For the meaning of 'settled land' see PARA 680 text to note 2 ante.

12 For the meaning of 'instrument' see PARA 688 note 7 ante.

13 Settled Land Act 1925 s 21(1)(b). For the meaning of 'trust instrument' see PARA 688 note 7 ante. Where there is no such instrument, then a deed, which will take effect as a trust instrument, must be executed contemporaneously with the vesting deed, and must declare the trusts affecting the land: s 21(1)(b) proviso.

14 For the meaning of 'trustees of the settlement' see PARA 750 note 1 post. For the meaning of 'settlement' see PARA 678 note 1 ante.

15 Settled Land Act 1925 s 21(1)(c). In the case of an ordinary settlement the trust instrument appoints or constitutes trustees of the settlement (see s 4(3)(b); and PARA 694 ante), and the principal vesting deed states who are the trustees of the settlement (see s 5(1)(c); and PARA 690 ante).

16 For the meaning of 'disposition' see PARA 685 note 14 ante.

17 As to applications to the court see PARA 792 post.

18 As to the application of capital money see PARA 808 post.

19 Settled Land Act 1925 s 21(1)(d).

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706. Equitable interests and powers not overreached.

The following equitable interests and powers cannot be overreached¹:

- 68 (1) an equitable interest protected by a deposit of documents relating to the legal estate² affected³;
- 69 (2) the benefit of a covenant or agreement restrictive of the user of land⁴;
- 70 (3) an easement, liberty or privilege over or affecting land and being merely an equitable interest⁵;
- 71 (4) the benefit of a contract to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option of purchase, a right of pre-emption or any other like right⁶; and
- 72 (5) any equitable interest protected by registration under the Land Charges Act 1972⁷ other than an annuity within the meaning of that Act⁸, or a limited owner's charge or a general equitable charge within the meaning of that Act⁹.

1 Ie under the Settled Land Act 1925 s 21(1) (see PARA 705 ante): see s 21(2). For the meaning of 'equitable interests' see PARA 695 note 8 ante.

2 For the meaning of 'legal estate' see PARA 678 note 13 ante.

3 Settled Land Act 1925 s 21(2)(i). See also MORTGAGE vol 77 (2010) PARA 260.

4 Ibid s 21(2)(ii). For the meaning of 'land' see PARA 680 note 1 ante. See also EQUITY vol 16(2) (Reissue) PARA 613 et seq; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 17; SALE OF LAND vol 42 (Reissue) PARA 331 et seq.

5 Ibid s 21(2)(iii). This includes any easement, right or privilege for an interest less than an estate in fee simple absolute in possession or a term of years absolute: see the Law of Property Act 1925 s 1(2)(a), (3); and EASEMENTS AND PROFITS A PRENDRE.

6 Settled Land Act 1925 s 21(2)(iv). As to options to purchase and rights of pre-emption see SALE OF LAND vol 42 (Reissue) PARAS 27-28.

7 As to rights capable of being registered under the Land Charges Act 1972 see LAND CHARGES vol 26 (2004 Reissue) PARA 622 et seq. This covers also any registration made under any statute which has effect as if the registration had been made under that Act: see the Settled Land Act 1925 s 117(3); the Land Charges Act 1972 s 18(5), (6); and LAND CHARGES vol 26 (2004 Reissue) PARA 601.

8 Settled Land Act 1925 s 21(2)(v)(a); Land Charges Act 1972 s 18(6). As to annuities within the meaning of the Land Charges Act 1972 see LAND CHARGES vol 26 (2004 Reissue) PARAS 618, 667, 670.

9 Settled Land Act 1925 s 21(2)(v)(b); Land Charges Act 1972 s 18(6). As to the charge of a limited owner and a general equitable charge see LAND CHARGES vol 26 (2004 Reissue) PARAS 618, 630-631. As to overreaching such interests see PARA 705 note 7 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(2) VESTING DEEDS AND TRUST INSTRUMENTS/707. Protection of equitable chargees.

707. Protection of equitable chargees.

Subject to the powers conferred by the Settled Land Act 1925 on a tenant for life¹, nothing contained in the foregoing powers of an owner entitled subject to equitable interests², deprives an equitable chargee of any of his rights or of his remedies for enforcing those rights³.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post. As to the statutory powers of a tenant for life see PARA 775 et seq post.

2 Ie the powers contained in the Settled Land Act 1925 s 21(1), (2) (see PARA 705 ante): see s 21(3).

3 Ibid s 21(3). As to the rights and remedies of mortgagees see MORTGAGE vol 77 (2010) PARA 101 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(3) DURATION AND DETERMINATION OF SETTLEMENTS/708. Duration of settlements.

(3) DURATION AND DETERMINATION OF SETTLEMENTS

708. Duration of settlements.

Land¹ which has been subject to a settlement² which is a settlement for the purposes of the Settled Land Act 1925, is deemed for the purposes of that Act to remain and be settled land³, and the settlement is deemed to be a subsisting settlement for those purposes, so long as: (1) any limitation⁴, charge or power of charging under the settlement⁵ subsists, or is capable of being exercised⁶; or (2) the person who, if of full age, would be entitled as beneficial owner to have that land vested in him for a legal estate is a child⁷. A settlement within the Settled Land Act 1925 ceases to be a settlement within that Act if at any time there is no relevant trust property⁸.

1 For the meaning of 'land' see PARA 680 note 1 ante.

2 For the meaning of 'settlement' see PARA 678 note 1 ante.

3 Settled Land Act 1925 s 3 (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2). For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 'Limitation' includes a trust: Settled Land Act 1925 s 117(1)(xii). For the meaning of 'trust' see PARA 678 note 9 ante.

5 'Under the settlement' means under the settlement deemed to be subsisting, and a limitation, charge or power of charging can only be said to subsist under a settlement if it is necessary to resort to the settlement for the purpose of overriding it: *Re Draycott Settled Estate*[1928] Ch 371.

6 Settled Land Act 1925 s 3(a). This provision covers cases where a settlement came into existence on 1 January 1926 by virtue of the Settled Land Act 1925, even if there was no settlement immediately prior to that date: *Re Earl of Carnarvon's Chesterfield Settled Estates*, *Re Earl of Carnarvon's Highclere Settled Estates*[1927] 1 Ch 138; *Re Ogle's Settled Estates*[1927] 1 Ch 229; *Re Lord Alington and London County Council's Contract*[1927] 2 Ch 253.

7 Settled Land Act 1925 s 3(b). See also PARA 665 note 13 ante. As to land limited on trust for a child in possession see PARA 678 ante. As to the age of majority see PARA 605 note 1 ante.

8 See the Trusts of Land and Appointment of Trustees Act 1996 s 2(4); and PARA 676 ante. See also REAL PROPERTY vol 39(2) (Reissue) PARA 65.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(3) DURATION AND DETERMINATION OF SETTLEMENTS/709. Conveyance on termination of settlement.

709. Conveyance on termination of settlement.

If any person of full age¹ becomes absolutely entitled to the settled land² (whether beneficially, or as personal representative³, or as trustee of land⁴ or otherwise) free from all limitations⁵, powers and charges taking effect under the settlement, he is entitled to require the trustees of the settlement⁶, personal representatives⁷ or other persons in whom the settled land is vested to convey the land to him, and if more persons than one being of full age become so entitled to the settled land they are entitled to require such persons to convey the land to them as joint tenants⁸. The court has power to make an order vesting the land in such person or persons in the same cases as those in which it can make an order in favour of a tenant for life⁹ or statutory owner¹⁰ where the land remains settled land¹¹.

1 As to the age of majority see PARA 605 note 1 ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 For the meaning of 'personal representative' see PARA 697 note 6 ante.

4 For the meaning of 'trustees of land' see PARA 676 note 5 ante; definition applied by the Interpretation Act 1978 s 5, Sch 1.

5 For the meaning of 'limitation' see PARA 708 note 4 ante.

6 For the meaning of 'trustees of the settlement' see PARA 750 note 1 post.

7 If on the death of a tenant for life or statutory owner the land ceases to be settled land, his general personal representatives are entitled to probate without any exception of settled land, which will vest in them accordingly: *Re Bridgett and Hayes' Contract* [1928] Ch 163. See further EXECUTORS AND ADMINISTRATORS.

8 Settled Land Act 1925 s 7(5). If the land is vested in personal representatives the conveyance may be made by means of an assent: see s 8(1); and PARA 698 ante. As to the procedure where the land is registered land see LAND REGISTRATION vol 26 (2004 Reissue) PARA 894 et seq. If the conveyance or assent does not state who are the trustees of the settlement for the purposes of the Settled Land Act 1925, a purchaser of a legal estate is bound and entitled to act on the assumption that the person in whose favour it has been made is absolutely entitled to the land free from all limitations, powers and charges taking effect under the settlement: see s 110(5) (as amended); and PARA 889 post. If when the settlement comes to an end the land is already vested in the person who has become absolutely entitled, a deed of discharge must be executed: see PARA 710 post.

The obligation to convey the settled land is subject and without prejudice: (1) where the settlement is created by will, to the rights and powers of the personal representatives for the purposes of administration (s 8(3)(a)); and (2) in any case to the person on whom the obligation is imposed being satisfied that provision has been or will be made for the payment of any unpaid death duties in respect of the land or any interest in it for which he is accountable, and any interest and costs in respect of such duties, or that he is otherwise effectively indemnified against such duties, interest and costs (see s 8(3)(b)). Death duties include inheritance tax payable on the death of a life tenant by virtue of the Inheritance Tax Act 1984 s 49 (as amended): see INHERITANCE TAXATION vol 24 (Reissue) PARA 480. As to security for inheritance tax, debts or liabilities see EXECUTORS AND ADMINISTRATORS.

9 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

10 As to the statutory owner see PARA 766 post.

11 See the Settled Land Act 1925 s 12(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2); and PARA 699 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(3) DURATION AND DETERMINATION OF SETTLEMENTS/710. Deed of discharge on the termination of a settlement.

710. Deed of discharge on the termination of a settlement.

Where the estate owner¹ of any settled land² holds the land free from all equitable interests³ and powers under a trust instrument⁴, the persons who, in the last or only principal vesting instrument⁵ or the last or only indorsement on or annex to it, are declared to be trustees of the settlement⁶ or the survivors of them are, unless they have notice of any derivative settlement, trust of land⁷ or equitable charge affecting the land, bound to execute, at the cost of the trust estate, a deed declaring that they are discharged from the trust so far as regards that land⁸.

If the trustees have notice of any derivative settlement or trust of land affecting the land, they must not execute a deed of discharge until a vesting instrument or a conveyance has been executed or made for giving effect to it⁹. In such a case the deed of discharge must contain a statement that the land is settled land by virtue of the vesting instrument and the trust instrument referred to in it, or is subject to a trust of land by virtue of the conveyance, as the case may require¹⁰.

If the trustees have notice of an equitable charge affecting the land, they must not execute a deed of discharge until they are satisfied that the charge is or will be secured by a legal mortgage¹¹, or is protected by registration as a land charge¹² or by deposit of the documents of title, or that its owner consents to the execution of the deed of discharge¹³.

If, in these circumstances and when these conditions have been complied with, the trustees of a settlement, on being requested to execute a deed of discharge by the estate owner¹⁴, or by a person interested under, or by the trustees of, a derivative settlement¹⁵, or by the trustees of land¹⁶, refuse to do so, or if for any reason the discharge cannot be effected without undue delay or expense, the estate owner, person interested or trustees may apply to the court¹⁷ for an order discharging the first-mentioned trustees as respects the whole or any part of the settled land, and the court may make such order as it thinks fit¹⁸.

Where a deed or order of discharge contains no statement to the contrary, a purchaser¹⁹ of a legal estate in the land to which the deed or order relates is entitled to assume that the land has ceased to be settled land, and is not subject to any trust of land²⁰.

1 For the meaning of 'estate owner' see PARA 697 note 2 ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 For the meaning of 'equitable interests' see PARA 695 note 8 ante.

4 For the meaning of 'trust instrument' see PARA 688 note 7 ante. It includes all the instruments, constituting a compound settlement: see PARA 681 ante.

5 For the meaning of 'principal vesting instrument' see PARA 698 note 1 ante.

6 For the meaning of 'trustees of the settlement' see PARA 750 note 1 post.

7 For the meaning of 'trust of land' see PARA 676 note 5 ante; definition applied by the Interpretation Act 1978 s 5, Sch 1.

8 See the Settled Land Act 1925 s 17(1) (amended by the Trust of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2). As to the procedure where the land is registered land see LAND REGISTRATION. As to distribution where the settlement has been lost see *Hansell v Spink* [1943] Ch 396; and as to distribution where death is presumed see PARA 711 post.

- 9 Settled Land Act 1925 s 17(1) proviso (a) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 2). For the meaning of 'conveyance' see PARA 698 note 12 ante.
- 10 See the Settled Land Act 1925 s 17(1).
- 11 For the meaning of 'legal mortgage' see PARA 698 note 23 ante. See also MORTGAGE vol 77 (2010) PARA 104.
- 12 See LAND CHARGES vol 26 (2004 Reissue) PARAS 622, 628, 631.
- 13 Settled Land Act 1925 s 17(1) proviso (b).
- 14 Ibid s 17(2)(a).
- 15 Ibid s 17(2)(b).
- 16 Ibid s 17(2)(c) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 2).
- 17 As to applications to the court see PARA 792 post.
- 18 Settled Land Act 1925 s 17(2).
- 19 For the meaning of 'purchaser' see PARA 702 note 12 ante.
- 20 Settled Land Act 1925 s 17(3) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 2). As to the deed or order of discharge containing a statement to the contrary see the text and note 10 supra.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(3) DURATION AND DETERMINATION OF SETTLEMENTS/711. Order for distribution where death is presumed.

711. Order for distribution where death is presumed.

Where a person interested in trust property has disappeared and has not been heard of for a considerable time, then, if satisfied of the probability of death¹, the court² may authorise distribution on the footing that he has died³.

1 As to the presumption of death see CIVIL PROCEDURE vol 11 (2009) PARAS 1100, 1101.

2 As to applications to the court see PARA 792 post.

3 *Re Benjamin, Neville v Benjamin* [1902] 1 Ch 723; *Re Newson-Smith's Settlement, Grice v Newson-Smith* [1962] 3 All ER 963n, [1962] 1 WLR 1478. Cf *Re Wilson* [1964] 1 All ER 196, [1964] 1 WLR 214.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(3) DURATION AND DETERMINATION OF SETTLEMENTS/712. Restrictions on dispositions of settled land.

712. Restrictions on dispositions of settled land.

Where land¹ is the subject of a vesting instrument² and the trustees of the settlement have not been discharged under the Settled Land Act 1925³, then: (1) any disposition⁴ by the tenant for life⁵ or statutory owner⁶ of the land, other than a disposition authorised by that Act or any other statute, or made in pursuance of any additional or larger powers mentioned in the vesting instrument, is void, except for the purpose of conveying or creating such equitable interests⁷ as he has power, in right of his equitable interests and powers under the trust instrument, to convey or create⁸; (2) if any capital money⁹ is payable in respect of a transaction, a conveyance¹⁰ to a purchaser¹¹ of the land only takes effect under the Settled Land Act 1925 if the capital money is paid to or by the direction of the trustees of the settlement or into court¹²; and (3) notwithstanding anything to the contrary in the vesting instrument or the trust instrument, capital money must not, except where the trustee is a trust corporation¹³, be paid to or by the direction of fewer persons than two as trustees of the settlement¹⁴.

However, these restrictions do not affect: (a) the right of a personal representative¹⁵ in whom the settled land is vested to convey or deal with the land for the purposes of administration¹⁶; (b) the right of a person of full age who has become absolutely entitled (whether beneficially or as trustee of land¹⁷ or personal representative or otherwise) to the settled land, free from all limitations¹⁸, powers and charges taking effect under the trust instrument, to require the land to be conveyed to him¹⁹; or (c) the power of the tenant for life, statutory owner or personal representative in whom the settled land is vested to transfer or create such legal estates, to take effect in priority to the settlement, as may be required for giving effect to any obligations imposed on him by statute²⁰, but, where any capital money is raised or received in respect of the transaction, the money must be paid to or by the direction of the trustees of the settlement or in accordance with an order of the court²¹.

1 For the meaning of 'land' see PARA 680 note 1 ante.

2 For the meaning of 'vesting instrument' see PARA 690 note 8 ante.

3 For the meaning of 'trustees of the settlement' see PARA 750 note 1 post. As to the discharge of trustees see PARA 759 post.

4 For the meaning of 'disposition' see PARA 685 note 14 ante.

5 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also note 8 infra; and PARA 761 et seq post.

6 As to the statutory owner see PARA 766 post.

7 For the meaning of 'equitable interests' see PARA 695 note 8 ante.

8 Settled Land Act 1925 s 18(1)(a). This provision is not limited to transactions by, or purporting to be by, a tenant for life as such: *Weston v Henshaw* [1950] Ch 510.

9 As to capital money arising under the Act see PARA 795 post.

10 For the meaning of 'conveyance' see PARA 698 note 12 ante.

11 For the meaning of 'purchaser' see PARA 702 note 12 ante.

12 Settled Land Act 1925 s 18(1)(b).

13 For the meaning of 'trust corporation' see PARA 705 note 6 ante.

14 Settled Land Act 1925 s 18(1)(c). As to the court's powers where on a sale the consideration attributable to timber on, or fixtures attached to, settled land which has been sold is paid by mistake to anyone other than the trustees see PARA 832 post.

15 For the meaning of 'personal representative' see PARA 697 note 6 ante.

16 Settled Land Act 1925 s 18(2)(a). See also PARA 698 ante. For the meaning of 'settled land' see PARA 680 text to note 2 ante.

17 For the meaning of 'trustees of land' see PARA 676 note 5 ante; definition applied by the Interpretation Act 1978 s 5, Sch 1.

18 For the meaning of 'limitation' see PARA 708 note 4 ante.

19 Settled Land Act 1925 s 18(2)(b) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2). See also PARA 709 ante.

20 Eg to give effect to equitable interests: see PARA 767 post.

21 Settled Land Act 1925 s 18(2)(c). As to the court see PARA 792 post.

UPDATE

712 Restrictions on dispositions of settled land

TEXT AND NOTE 14--The two-trustees rule is not satisfied by money being paid to or dealt with as directed by a person, other than a trust corporation within the meaning of the Trustee Act 1925, who is acting either both as a trustee and as attorney for one or more other trustees, or as attorney for two or more trustees, and who is not acting together with any other person or persons: Trustee Delegation Act 1999 s 7(1), (2).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(3) DURATION AND DETERMINATION OF SETTLEMENTS/713. Settled land held upon trust for persons entitled in undivided shares.

713. Settled land held upon trust for persons entitled in undivided shares.

If settled land¹ is held in trust for persons entitled in possession under a trust instrument² in undivided shares³, the trustees of the settlement⁴ (if the settled land is not already vested in them) may require the estate owner⁵ in whom the settled land is vested (but, in the case of a personal representative, subject to his rights and powers for purposes of administration⁶), at the cost of the trust estate, to convey the land to them or to assent to the land vesting in them as joint tenants⁷. If and when the settled land so held in trust in undivided shares is or becomes vested in the trustees of the settlement, the land is held by them (subject to any incumbrances affecting the settled land which are secured by a legal mortgage⁸, but freed from any incumbrances affecting the undivided shares or not so secured, and from any interests, powers and charges subsisting under the trust instrument which have priority to the trust for the persons entitled to the undivided shares) in trust for the persons interested in the land⁹. If the settled land is not vested in the trustees, it is held, until it is so vested, by the estate owner in whom it is vested in trust for the persons interested in the land¹⁰. An undivided share in land is not capable of being created except under a trust instrument or under the Law of Property Act 1925¹¹, and then takes effect behind a trust of land¹². The priority among themselves of any incumbrances, whether affecting the entirety of the land or an undivided share, is not affected¹³.

1 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

2 For the meaning of 'trust instrument' see PARA 688 note 7 ante.

3 This provision applies immediately the persons entitled in undivided shares have interests in possession. This may occur either during the subsistence of the interest of the tenant for life (*Re Hind, Bernstone v Montgomery* [1933] Ch 208) or on its termination (*Re Cugny's Will Trusts, Smith v Freeman* [1931] 1 Ch 305; *Re Thomas* [1939] Ch 513, [1939] 1 All ER 379). It also applies although the division into undivided shares is brought about, not by the trust instrument, but by a subsequent deed or event, and a conveyance of an undivided moiety of a base fee has been held to be a trust instrument within this provision: *Re Hind, Bernstone v Montgomery* supra. As to base fees see REAL PROPERTY vol 39(2) (Reissue) PARAS 134-139.

4 For the meaning of 'trustees of the settlement' see PARA 750 note 1 post.

5 For the meaning of 'estate owner' see PARA 697 note 2 ante.

6 See PARA 698 ante. For the meaning of 'personal representative' see PARA 697 note 6 ante.

7 See the Settled Land Act 1925 s 36(1).

8 For the meaning of 'legal mortgage' see PARA 698 note 23 ante.

9 Settled Land Act 1925 s 36(2) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2). The Settled Land Act 1925 s 36 (as amended) binds the Crown: s 36(7). References to the persons interested in the land include persons interested as trustees or personal representatives (as well as persons beneficially interested): s 36(6) (substituted by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 2).

10 See the Settled Land Act 1925 s 36(1).

11 See the Law of Property Act 1925 s 34 (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 211.

12 Settled Land Act 1925 s 36(4) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 2). For the meaning of 'trust of land' see PARA 676 note 5; definition applied by the Interpretation Act 1978 s 5, Sch 1.

13 Settled Land Act 1925 s 36(5).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(3) DURATION AND DETERMINATION OF SETTLEMENTS/714. Vesting order.

714. Vesting order.

If an estate owner¹ refuses or neglects for one month after a written demand to convey to the trustees the settled land² which is held in trust in undivided shares³, or if by reason of his being outside the United Kingdom⁴, or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court⁵ is satisfied that the conveyance cannot otherwise be made, or cannot be made without undue delay or expense, then, on the application of the trustees of the settlement⁶, the court may make an order vesting the settled land in them in trust for the persons interested in the land⁷.

1 For the meaning of 'estate owner' see PARA 697 note 2 ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 See PARA 713 ante.

4 For the meaning of 'United Kingdom' see PARA 699 note 5 ante.

5 As to the court see PARA 792 post.

6 For the meaning of 'trustees of the settlement' see PARA 750 note 1 post.

7 Settled Land Act 1925 s 36(3) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2). As to the statutory provisions applying to such vesting orders see the Settled Land Act 1925 s 113(9); and PARA 699 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(i) Traditional Limitations/715. In general.

(4) BENEFICIAL INTERESTS

(i) Traditional Limitations

715. In general.

The traditional limitations to be found in a strict settlement of land not made on marriage¹ are a life interest to the settlor², with remainder to his first and other sons in tail male, with remainder to his first and other sons in tail general, with remainder to his daughters as tenants in common in tail with cross remainders between them³. The settlement might contain powers of charging for pin money⁴ and a jointure⁵ for the wife of the tenant for life, and powers for raising portions for younger children⁶. Where a settlement is made on marriage, the sons and daughters to be provided for would usually be confined to the children of the marriage, and the settlement would traditionally contain trusts for the purpose of providing pin money and a jointure for the wife and portions for the younger children of the marriage⁷. However, it is now more common for a settlement to benefit the settlor's children equally⁸.

1 It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante. As to settlements made on marriage see PARA 628 et seq ante.

2 As to life interests see PARA 716 post.

3 As to interests in remainder see PARA 717 post. It is no longer possible to create entailed interests: see PARA 677 ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 119.

4 As to pin money see PARA 724 post.

5 As to jointure see PARA 725 post.

6 As to portions see PARAS 727-739 post.

7 See PARA 628 et seq ante.

8 As to the rights of illegitimate, legitimated and adopted children see PARAS 731-733 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(i) Traditional Limitations/716. Life interests.

716. Life interests.

In settlements of realty¹, whether made on marriage or not, the first life interest is usually given to the settlor². In the case of a settlement made in favour of the living children of the settlor or of another named person, a life interest was traditionally given to the sons and daughters successively upon failure of the prior limitations, and the same practice was usually followed in the case of a settlement by will³.

Life interests are generally expressed to be without impeachment of waste, so as to enable the tenant for life for the time being to cut timber, open mines and commit other wasteful acts for his own profit⁴.

1 It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

2 As to the limitation of life interests see REAL PROPERTY vol 39(2) (Reissue) PARA 144 et seq. As to settlements made on marriage see PARA 628 et seq ante.

3 As to settlements by will see PARA 630 ante.

4 As to liability for waste see PARA 986 et seq post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(i) Traditional Limitations/717. Interests in remainder.

717. Interests in remainder.

Subject to any prior life interests and to the trusts, if any, for pin money, jointures and portions¹, realty was traditionally settled by a marriage settlement upon trust for the first and all other sons of the intended marriage successively according to seniority in tail male², with remainder upon trust for the daughters of the marriage in tail with cross remainders³ between them, but provision might be made for sons of a subsequent marriage in priority to daughters of the intended marriage. However, it is now more common for a settlement to benefit the settlor's children equally⁴.

1 See PARAS 724-739 post.

2 As to the nature, incidents and mode of creation of entailed interests see REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq; and as to the descent of entailed interests see EXECUTORS AND ADMINISTRATORS. It is no longer possible to create entailed interests: see PARA 677 ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 119. Under a settlement, not made on marriage, under which the sons of the settlor or of any other person are given life interests, it was usual to follow each life interest with a trust for the sons of the life tenant successively in tail male. This was also the practice in the case of strict settlements by will. A trust in favour of the first and other sons of a person in tail will take effect in their favour successively according to seniority, even if the word 'successively' is omitted: *Re Close's Estate* [1910] 1 IR 357; *Re Gosset's Settlement*, *Gibble v Lloyds Bank* [1943] Ch 351, [1943] 2 All ER 515.

3 As to cross remainders see PARA 718 post.

4 As to the rights of illegitimate, legitimated and adopted children see PARAS 731-733 post. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(i) Traditional Limitations/718. Cross remainders.

718. Cross remainders.

In the case of a deed, unlike a will, cross remainders in tail cannot be raised by implication, however plainly the intention of the settlor may have been expressed, as technical words of limitation are essential for the creation of an entailed interest¹. However, if a deed contains express limitations by way of cross remainder, so that the court is not asked to supply words of limitation, the same rule of construction applies to both deeds and wills, and the court gives effect to the plain intention of the settlor².

1 *Cole v Levingston* (1672) 1 Vent 224; *Doe d Tanner v Dorvell* (1794) 5 Term Rep 518; *Doe d Foquett v Worsley* (1801) 1 East 416; *Doe d Clift v Birkhead* (1849) 4 Exch 110 at 125; *Bainton v Bainton* (1865) 34 Beav 563; *Gaussin and French v Ellis* [1930] IR 116, Ir CA. See also the Law of Property Act 1925 s 130(1) (repealed except in relation to any entailed interest created before 1 January 1997); and PARA 939 post. Where technical words are unnecessary, as in the case of an interest pur autre vie, cross remainders in tail may be implied even in a deed: *Re Battersby's Estate* [1911] 1 IR 453. It is no longer possible to create new entailed interests: see PARA 677 ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 119.

2 *Doe d Watts v Wainwright* (1793) 5 Term Rep 427; *Cole v Sewell* (1848) 2 HL Cas 186. Accordingly, 'survivors' may be construed as 'others' (*Doe d Watts v Wainwright* supra; *Cole v Sewell* supra; *Re Palmer's Settlement Trusts* (1875) LR 19 Eq 320), and 'shares' as including accrued shares (*Doe d Clift v Birkhead* (1849) 4 Exch 110, overruling *Edwards v Alliston* (1827) 4 Russ 78).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(i) Traditional Limitations/719. Ultimate limitations.

719. Ultimate limitations.

The ultimate limitation in a settlement of realty, as in a settlement of personalty, is sometimes designed to bring the settled property back to its original ownership, and is expressed to be upon trust for the settlor in fee simple¹. The settlor under such a limitation takes the ultimate estate as a purchaser by virtue of the settlement, and is not entitled to it as his former estate or part of it². However, there may be an ultimate trust in favour of other persons.

Where a deed is executed after 1925 words of limitation are not necessary to pass a fee simple³.

1 See REAL PROPERTY vol 39(2) (Reissue) PARA 117. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante. As to the ultimate trusts of settlements of personalty see PARA 932 post.

2 See the Inheritance Act 1833 s 3 (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 164. See also EXECUTORS AND ADMINISTRATORS.

3 See the Law of Property Act 1925 s 60(1); and REAL PROPERTY vol 39(2) (Reissue) PARA 93.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(i) Traditional Limitations/720. Traditional provisions in a resettlement.

720. Traditional provisions in a resettlement.

Where an estate was settled upon the traditional trusts in strict settlement¹ and the first-born son, being tenant in tail in remainder, had attained full age, he would generally execute a disentailing deed and this would then be followed by a resettlement². By the disentailing deed³, in which the father would join both as protector of the settlement⁴ and for the purpose of conveying his life estate, the estate would usually be conveyed to a grantee upon such trusts as the father and son would jointly appoint, and in default of such appointment upon the trusts subsisting under the existing settlement. The resettlement proper would then be effected by the father and son in exercise of the joint power conferred on them by the disentailing deed⁵. The new trusts were generally expressed to be subject to the trusts and charges preceding the son's former estate tail, except the father's life estate. If the resettlement was made on the marriage of the son, the first of the new trusts was generally to provide by rentcharges pin money⁶ for the son's wife, and then an annuity for the son during the joint lives of himself and his father, and a jointure for the son's wife if she survived him⁷. If the son was neither married nor about to marry, power was generally reserved to him to charge the estate with pin money and jointure rentcharges. Subject to these charges, the father's old life estate was restored by the resettlement, and this restoration had the effect of also giving back to him the powers annexed to the life estate by the original settlement, in addition to which he was capable of exercising all the powers conferred by the resettlement⁸. That estate was followed by the limitation of an estate to the son for his life. After the determination of this latter estate, the property was given to the son's first and other unborn sons successively in tail, or in tail male, with remainder to such sons successively in tail general. These were followed by limitations of life estates to the son's younger brothers and estates tail or tail male in favour of the issue of the son's younger brothers, and sometimes by limitations in favour of collateral branches of the family. If limitations in favour of daughters of the son or of the son's younger brothers were introduced, they were generally made to the daughters successively in tail male. The ultimate limitation was generally to the son in fee simple⁹.

1 See PARA 715 ante. The traditional trusts of a strict settlement and of a resettlement are now less common. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

2 A resettlement cannot be made while the tenant in tail is a child, except by a court order under the Variation of Trusts Act 1958: see PARA 674 ante; and TRUSTS vol 48 (2007 Reissue) PARAS 1062-1066. In order to avoid full ad valorem stamp duty, the resettlement is sometimes postponed until the son's marriage, when it may be effected as a marriage settlement: see the Stamp Duty (Exempt Instruments) Regulations 1987, SI 1987/516; and STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1083. See also PARA 623 ante. As to marriage settlements see PARA 628 et seq ante. As to the age of majority see PARA 605 note 1 ante.

3 As to disentail see REAL PROPERTY vol 39(2) (Reissue) PARA 122 et seq. As to entailed interests see REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq. It is no longer possible to create new entailed interests: see PARA 677 ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 119.

4 See REAL PROPERTY vol 39(2) (Reissue) PARAS 124, 128.

5 See REAL PROPERTY vol 39(2) (Reissue) PARAS 123-124.

6 As to pin money see PARA 724 post. As to rentcharges see PARA 724 et seq post; and generally RENTCHARGES AND ANNUITIES.

7 As to jointure see PARA 725 post; and POWERS. As to annuities see PARA 724 et seq post; an RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 790 et seq.

8 See the Settled Land Act 1925 s 22(2); and PARA 773 post. The statutory powers conferred by the Settled Land Act 1925 are not affected by the resettlement: see PARA 777 post. Concurrence in a resettlement, which revoked the uses, trusts, limitations, intents and purposes of the original settlement, did not put an end to a power to charge conferred by it: *Evans v Evans* (1853) 1 WR 215.

9 See further REAL PROPERTY vol 39(2) (Reissue) PARAS 118-120.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(i) Traditional Limitations/721. Referential trusts.

721. Referential trusts.

Property is frequently settled by reference to the trusts of other property settled by the same or a different instrument¹. The effect of a referential trust depends in every case upon the particular words employed to refer to the principal trusts². A reference to the trusts of a subsisting settlement so far as they are capable of taking effect means the trusts of that settlement as then subsisting without regard to intermediate appointments³, and a reference to the trusts of a subsisting settlement in favour of particular beneficiaries incorporates the provisions relating to those beneficiaries, but not the directions as to the time when the benefits are to arise⁴. Where property was settled by reference to trusts declared in a deed of even date which was never executed⁵, or was devised and bequeathed to be assigned on the trusts of a settlement which was no longer subsisting and of which there were no longer trustees to receive the property on the trusts⁶, there was in one case a resulting trust to the settlor and in another case an intestacy⁷.

Where property is directed to be held upon the same trusts as property already settled, it is not by that direction made an accretion to the original property, and it may not devolve with the original property in all respects⁸, unless there is some context from which such an intention can be inferred⁹.

1 As to vesting deeds and trust instruments see PARA 688 et seq ante. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

2 As to the effect of various phrases incorporating other trusts see *Wortham v Mackinnon* (1831) 4 Sim 485 ('uses ... existing, undetermined or capable of taking effect'); *Ford v Ruxton* (1844) 1 Coll 403 ('the same trusts'); *Marshall v Baker* (1862) 31 Beav 608 ('the same or the like trusts'); *Re Shirley's Trusts* (1863) 32 Beav 394 ('in like manner ... as if such trusts and provisions were here fully repeated'); *Re Smith, Bashford v Chaplin* (1881) 45 LT 246 ('the like trusts'); *Brigg v Brigg* (1885) 33 WR 454; *Re Shelton's Settled Estates, Shelton v Shelton* [1945] Ch 158, [1945] 1 All ER 283 ('or as nearly corresponding thereto as the circumstances of the case ... will admit'); *Re Bennett-Stanford Settlement Trusts, Attwood v Bennett-Stanford* [1947] 1 All ER 888 ('or as near thereto as circumstances will permit'). If the meaning of the original trusts is clear, a subsequent inaccurate recital of their effect will be rejected: *Grade v Grade* (1843) 3 Dr & War 435. The proviso for redemption in a mortgage may be so worded as to revive the original trusts of a settlement: see *Re Oxendon's Settled Estates, Oxendon v Chapman* (1904) 74 LJ Ch 234; and MORTGAGE vol 77 (2010) PARA 171. As to the circumstances in which the limitations of a settlement might be varied by the proviso see *Hipkin v Wilson* (1850) 3 De G & Sm 738; *Meadows v Meadows* (1853) 16 Beav 401; *Whitbread v Smith* (1854) 3 De GM & G 727.

3 *Smyth-Pigott v Smyth-Pigott* [1884] WN 149, CA.

4 *Hare v Hare* (1876) 24 WR 575. See further POWERS.

5 *Re Wilcock, Wilcock v Johnson* (1890) 62 LT 317.

6 *Re Slade, Witham v Watson* (1919) 89 LJ Ch 412, HL. It should be noted that in this case there was no gift to the persons interested under the settlement.

7 As to resulting trusts see EQUITY vol 16(2) (Reissue) PARA 853; TRUSTS vol 48 (2007 Reissue) PARA 705 et seq. Revocation of a will does not, however, invalidate a settlement containing trusts for payment of legacies bequeathed by that will: *Re Hall's Settlement Trusts, Samuell v Lamont* [1937] Ch 227, [1937] 1 All ER 571. Cf *Darley v Langworthy* (1774) 3 Bro Parl Cas 359; *Re Whitburn, Whitburn v Christie* [1923] 1 Ch 332.

8 *Montague v Montague* (1852) 15 Beav 565; *Re North, Meates v Bishop* (1887) 76 LT 186; *Re Marquis of Bristol, Earl Grey v Grey* [1897] 1 Ch 946; *Re Wood, Wodehouse v Wood* [1913] 2 Ch 574, CA; *Re Campbell's Trusts, Public Trustee v Campbell* [1922] 1 Ch 551; *Re Gooch, Gooch v Gooch* [1929] 1 Ch 740.

9 *Baskett v Lodge* (1856) 23 Beav 138; *Baker v Richards* (1859) 27 Beav 320; *Re Perkins, Perkins v Bagot* [1893] 1 Ch 283; *Re Fraser, Ind v Fraser* [1913] 2 Ch 224; *Re Paul's Settlement Trusts, Paul v Nelson* [1920] 1 Ch 99; *Re Playfair, Palmer v Playfair* [1951] Ch 4, [1950] 2 All ER 285. There is no rule of law preventing the coalescence of two funds subject to a charge peculiar to one of them: *Re Rydon's Settlement, Barclays Bank v Everitt Ltd* [1955] Ch 1, [1954] 3 All ER 1, CA. Cf *Re Cavendish, Grosvenor v Butler* [1912] 1 Ch 794.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(i) Traditional Limitations/722. Referential powers.

722. Referential powers.

Powers created by reference to other powers are naturally construed as being of the same nature and extent as such other powers¹, but divested of any conditions or restrictions personal to the donee of the original power². However, if the original power is inconsistent with the limitations in the instrument creating the referential power, the referential power is, as a matter of construction, limited so as to conform with those limitations³.

Where estates are devised to the same uses and subject to like powers as those to which settled estates have been limited, they are subject to all the trusts, powers and provisos contained in the settlement, so that powers of sale, leasing and exchange will have to be exercised by the same persons as those who have to exercise the similar powers contained in the original settlement⁴. A power of appointment may nevertheless be incorporated in a settlement by reference, even though the power is to be given to a person other than the appointor under the original settlement⁵.

A power of appointment over an original share operates on an accruing share which becomes subject to the same trusts, powers and provisos as the original share⁶.

1 See *Cox v Cox* (1855) 1 K & J 251, where a power to give receipts was not implied in a referential power of sale; and POWERS. A power to make loans of a limited amount is not increased by the accruer of property by way of referential trust: *Eustace v Robinson* (1880) 7 LR Ir 83, Ir CA.

2 *Earl of Harrington v Countess Dowager of Harrington* (1868) LR 3 HL 295.

3 *Crossman v Bevan* (1859) 27 Beav 502.

4 *Taylor v Miles* (1860) 28 Beav 411; cf *Morgan v Rutson* (1848) 16 Sim 234; *Earl of Shrewsbury v Keightley* (1866) LR 2 CP 130, Ex Ch. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

5 *Countess of Berchtoldt v Marquis of Hertford* (1844) 7 Beav 172.

6 *Re Hutchinson's Settlement, ex p Dunn* (1852) 5 De G & Sm 681. As to powers of appointment see PARA 922 et seq post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(i) Traditional Limitations/723. Multiplication of charges.

723. Multiplication of charges.

Where trusts are created by reference¹, a proviso is commonly inserted that charges on the estate are not to be increased or multiplied. In the absence of such a proviso, as a general rule a trust created by reference is not read so as to make a duplication of charges², although an intention to do so may be inferred from the language of any particular instrument³.

1 As to referential trusts see PARA 721 ante. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

2 *Hindle v Taylor* (1855) 5 De GM & G 577; *Boyd v Boyd* (1863) 9 LT 166; *Trew v Perpetual Trustee Co* [1895] AC 264, PC. Cf *Re Campbell's Trusts, Public Trustee v Campbell* [1922] 1 Ch 551.

3 *Cooper v Macdonald* (1873) LR 16 Eq 258; *Re Arnell, Re Edwards, Prickett v Prickett* [1924] 1 Ch 473. See also *Re Beaumont, Bradshaw v Packer* [1913] 1 Ch 325.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(ii) Rentcharges and Annuities/724. Pin money.

(ii) Rentcharges and Annuities

724. Pin money.

Pin money is an allowance made by a husband to his wife for her separate personal expenses¹. This allowance can be secured either by the limitation to the trustees during the joint lives of the husband and wife of a yearly rentcharge secured on the husband's real estate, or by a trust to pay the rentcharge to the trustees out of the rents and profits of the estate in trust for the wife². Such a rentcharge accrues from day to day, and no provision for its apportionment is required³. As a rule, the statutory means of compelling payment are relied on, and no express provisions for that purpose are inserted in the settlement⁴.

1 *Howard v Earl of Digby* (1834) 2 Cl & Fin 634 at 654, HL. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

2 It is not now necessary to create a rentcharge to secure pin money since a trust for this purpose can be enforced against the tenant for life: see PARAS 767-768 post. As to the power to create rentcharges in the case of settlements see PARA 678 note 25 ante. As to rentcharges generally see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 753 et seq.

3 See the Apportionment Act 1870 ss 2 (as amended), 5; and PARA 957 post.

4 As to the statutory means of compelling payment see the Law of Property Act 1925 s 121 (as amended); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 865.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(ii) Rentcharges and Annuities/725. Jointure.

725. Jointure.

A jointure is *prima facie* a provision for a wife after the death of her husband¹. Such provision is made out of the husband's land and can be created either by limiting a yearly rentcharge upon trust for the wife or by a trust to pay the rentcharge to her out of the rents and profits of the land, if she survives her husband². The rentcharge need not be made apportionable³, and the statutory means of recovering it are usually relied on as in the case of pin money⁴.

It is not unusual to insert a power for the husband, if he survives the wife, to appoint a jointure for a subsequent wife. In the case of a deficiency, unless the settlement otherwise provides, jointures and portions⁵ abate proportionately⁶.

1 *Re De Hoghton, De Hoghton v De Hoghton* [1896] 2 Ch 385; *Greenwood v Lutman* [1915] 1 IR 266. See also *Jamieson v Trevelyan* (1854) 10 Exch 269, which turned on the peculiar language of the will then in question; and POWERS.

2 As in the case of pin money (see PARA 724 ante) a jointure can be created by means of a trust: see PARA 724 note 2 ante. As to the power to create rentcharges in the case of settlements see PARA 678 note 25 ante. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

3 See the Apportionment Act 1870 ss 2 (as amended), 5; and PARA 957 post.

4 See the Law of Property Act 1925 s 121 (as amended); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 865.

5 As to portions see PARA 727 et seq post.

6 *Re Keele Estates, Aveling v Sneyd* [1952] Ch 306, [1952] 1 All ER 44; revsd on another point [1952] Ch 603, [1952] 2 All ER 164, CA.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(ii) Rentcharges and Annuities/726. Annuities.

726. Annuities.

If it is desired that a certain income be secured to a person out of the rents and profits of land for life or some other period, it is usual to limit the land to trustees upon trust that the proposed annuitant is to receive a yearly rentcharge of the proposed amount¹. The limitation should state the period during which the rentcharge is payable, but no technical words of limitation are necessary².

It is no longer usual to insert express provisions as to the recovery of rentcharges, reliance being placed on the remedies afforded by statute³, and they need not be made apportionable⁴.

1 It is not necessary to create a rentcharge: see PARA 724 note 2 ante. As to the power to create rentcharges in the case of settlements see PARA 678 note 25 ante. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

2 See the Law of Property Act 1925 s 60(1); and REAL PROPERTY vol 39(2) (Reissue) PARA 93. As to the commencement and duration of rentcharges and annuities see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 751 et seq.

3 See *ibid* s 121 (as amended); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 865.

4 See the Apportionment Act 1870 ss 2 (as amended), 5; and PARA 957 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iii) Portions/727. Nature of portions.

(iii) Portions

727. Nature of portions.

Since the principal trusts of a strict settlement were traditionally framed so as to carry the settled land in its entirety to one son of the settlor and his descendants, further provisions were commonly inserted for the purpose of providing sums of money for the benefit of the other, and generally younger, children of the settlor who did not succeed to the land. Such sums are known as portions¹. Formerly, such sums were secured by limiting the settled land to trustees for a long term² upon trust by mortgage or sale of the land or otherwise to raise such sums. However, after 1925 it became usual to declare trusts for raising portions without limiting a term of years³. The portions were generally directed to be held in trust for such children on their attaining the age of 21, or, if female, marrying under that age, in such shares and proportions as the husband and wife might jointly appoint by deed, and subject to any such appointment as the survivor might by deed or will appoint, and in default of any such appointment for the qualified children in equal shares⁴. It was not unusual to insert a power for the settlor, if he or she was the surviving spouse, to charge portions for the children of a subsequent marriage⁵.

1 *Jones v Maggs* (1852) 9 Hare 605. This use of the word 'portions' should not be confused with its use in connection with the doctrine of satisfaction or the rule against double portions, as to which see EQUITY vol 16(2) (Reissue) PARA 739 et seq. Portions charged by a father under a power contained in a settlement made by himself and a son take priority over any estate given to the son, unless a contrary intention is expressed or implied in the settlement: *Mills v Mills* (1846) 3 Jo & Lat 242. As to powers of charging portions generally see POWERS. The traditional trusts of a strict settlement, while still permissible, are less common. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

2 Such a term can be limited to commence more than 21 years from the date of the settlement: see the Law of Property Act 1925 s 149(3); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 106. The statutory restrictions on the number of the trustees of a settlement (see PARA 756 note 3 post) do not apply in the case of the trustees of a portions term: see the Trustee Act 1925 s 34(3)(c); and TRUSTS vol 48 (2007 Reissue) PARA 804.

3 Such a trust can be enforced against the tenant for life: see PARA 767 post.

4 Where the ultimate trust of the sum raised was that it should go as part of the personal estate of the settlor, the sum, having been raised, was held to devolve as personalty, notwithstanding that when it was raised the settlor could not be compelled to pay it and that the estate charged with it might not have been well discharged: *Tucker v Loveridge* (1858) 2 De G & J 650. As to the abatement of jointures and portions in case of a deficiency see PARA 725 text and note 6 ante.

5 See POWERS.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iii) Portions/728. Meaning of 'eldest son'.

728. Meaning of 'eldest son'.

The object of raising portions being to make provision for the children other than the one who takes the settled estate, the court leans against a strict construction of the clause when the position of the children has been changed, as for instance by the death of the first-born son. Where the trusts have been for the younger children, or the children other than an eldest son¹, or the children other than a son or sons who should by means of the settlement become entitled to the first estate of freehold or inheritance, the questions who is an eldest son and who are younger children ought *prima facie* to be decided at the time of the distribution of the portions fund², and in construing the words 'eldest son' the court is not bound to say that 'eldest son' is the person who originally answered that description, as being the first-born son, but that it really means the person who may have become, in the events that have happened, an eldest son, and who as such eldest son comes into actual enjoyment of the bulk of the estate³. A daughter taking the estate has been treated as an eldest son⁴.

The vesting of a portion by appointment or otherwise does not exclude this rule⁵. However, a payment when made in accordance with the terms of the settlement, or, where the period of distribution has been accelerated by the release of the prior life estate, upon the eldest son actually succeeding, is final and irrevocable⁶, and the application of the rule may be excluded by the terms of the settlement⁷.

1 If the portions are provided for children 'other than an eldest or only son', daughters take portions as being others than an eldest or only son, but a provision for children 'besides an eldest or only son' requires the existence of a son to bring it into operation: *Walcott v Bloomfield* (1843) 4 Dr & War 211; *Re Flemyngh's Trusts* (1885) 15 LR Ir 363; *L'Estrange v Winniett* [1911] 1 IR 62. See, however, *Simpson v Frew* (1856) 5 I Ch R 517. As to illegitimate, legitimated and adopted children see PARAS 731-733 post.

2 *Ellison v Thomas* (1862) 1 De GJ & Sm 18; *Collingwood v Stanhope* (1869) LR 4 HL 43; *Morton's Trusts* [1902] 1 IR 310n; *Re Stawell's Trusts, Poole v Riversdale* [1909] 1 Ch 534 (revised on the construction of the documents [1909] 2 Ch 239, CA).

3 *Chadwick v Doleman* (1705) 2 Vern 528; *Lord Teynham v Webb* (1751) 2 Ves Sen 198; *Loder v Loder* (1754) 2 Ves Sen 530; *Earl of Northumberland v Earl of Egremont* (1759) 1 Eden 435; *Broadmead v Wood* (1780) 1 Bro CC 77; *Matthews v Paul* (1819) 3 Swan 328; *Gray v Earl of Limerick* (1848) 2 De G & Sm 370; *Richards v Richards* (1860) John 754; *Ellison v Thomas* (1862) 1 De GJ & Sm 18; *Davies v Huguenin* (1863) 1 Hem & M 730; *Re Flemyngh's Trusts* (1885) 15 LR Ir 363. Cf *Re Bayley's Settlement* (1871) 6 Ch App 590. On the other hand, a child who was originally a younger child does not become an eldest son because at the time of distribution he is in fact the eldest child, if he does not take the bulk of the estate: *Re Wrottesley's Settlement, Wrottesley v Fowler* [1911] 1 Ch 708 at 713.

4 *Earl of Northumberland v Earl of Egremont* (1759) 1 Eden 435; *Stirum v Richards* (1861) 12 I Ch R 323. As a rule, however, an elder daughter, where there is a son, is accounted a younger child: *Heneage v Hunloke* (1742) 2 Atk 456.

5 *Chadwick v Doleman* (1705) 2 Vern 528; *Re Stawell's Trusts, Poole v Riversdale* [1909] 1 Ch 534 (revised on another point [1909] 2 Ch 239, CA). As to powers of appointment see PARA 922 et seq post.

6 *Re Stawell's Trusts, Poole v Riversdale* [1909] 1 Ch 534; revised on another point [1909] 2 Ch 239, CA.

7 *Windham v Graham* (1826) 1 Russ 331; *Re Bankes, Alison v Bankes* (1909) 101 LT 778; *Re Wise's Settlement, Smith v Waller* [1913] 1 Ch 41; *Re Beresford's Settlement, Irvine v Beresford* [1914] 1 IR 222.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iii) Portions/729. Meaning of 'younger sons'.

729. Meaning of 'younger sons'.

As the principle is generally that no child who takes the bulk of the estate is to share in the portions fund¹, if under the settlement the estate goes to a younger son, and not to the first-born son, then in relation to the portions the first-born is regarded as a younger son and the younger is regarded as the eldest son². However, a son who takes the estate cannot claim a portion on the ground that his inheritance is valueless³. A son who, while interested in remainder, joins in a resettlement will be treated as an eldest son and excluded from sharing in the portions provision whatever the value of his interest under the resettlement may be⁴. If the first-born son joins with his father in resettling the estate, a younger son who actually comes into possession of the estate by virtue, not of the limitations of the original settlement, but of the subsequent resettlement, is entitled to his portion as a younger son⁵. Similarly, where a settlement contained a power of revocation and reappointment to new uses, a younger son to whom the estate was appointed did not take any estate under the settlement in such a sense that he should be deemed an eldest son⁶.

1 See PARAS 727-728 ante.

2 *Beale v Beale* (1713) 1 P Wms 244; *Duke v Doidge* (1746) 2 Ves Sen 203n; *Ellison v Thomas* (1862) 1 De GJ & Sm 18; *Davies v Huguenin* (1863) 1 Hem & M 730; *Swinburne v Swinburne* (1868) 17 WR 47; *Collingwood v Stanhope* (1869) LR 4 HL 43 at 52; *L'Estrange v Winniett* [1911] 1 IR 62; *Re Cavendish's Settlement, Grosvenor v Lady Butler* (1912) 106 LT 510. Where, however, the trusts were for children other than an eldest son for the time being entitled to a life interest, the personal representatives of a deceased eldest son who had in the past enjoyed a life interest were excluded: *Re Gunter's Settlements, Owen v Pritchard-Barrett* [1949] Ch 502, [1949] 1 All ER 680, not following *Ellison v Thomas* supra.

3 *Collingwood v Stanhope* (1869) LR 4 HL 43; *Reid v Hoare* (1884) 26 ChD 363; *Re Fitzgerald's Settled Estates, Saunders v Boyd* [1891] 3 Ch 394; *Rooke v Plunkett* [1902] 1 IR 299.

4 *Re Leeke's Settlement Trusts, Borough v Leeke* [1937] Ch 600, [1937] 2 All ER 563. As to resettlements see PARA 720 ante.

5 *Spencer v Spencer* (1836) 8 Sim 87; *Tennison v Moore* (1850) 13 I Eq R 424; *Wyndham v Fane* (1853) 11 Hare 287; *Macoubrey v Jones* (1856) 2 K & J 684; *Adams v Beck* (1858) 25 Beav 648; *Re Smyth's Trusts, ex p Smyth* (1861) 12 I Ch R 487; *Sing v Leslie* (1864) 2 Hem & M 68; *Domville v Winnington* (1884) 26 ChD 382; *Re Fitzgerald's Settled Estates, Saunders v Boyd* [1891] 3 Ch 394; *Re Wrottesley's Settlement, Wrottesley v Fowler* [1911] 1 Ch 708.

6 *Wandesforde v Carrick* (1871) IR 5 Eq 486.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iii) Portions/730. Designation by name.

730. Designation by name.

The fact that the persons to take or be excluded from portions are designated by name may or may not make a difference, according as the view is taken, on the construction of the particular instrument, that the named individual is intended, or that the named person is included or excluded as fulfilling a certain qualification¹.

¹ *Jermyn v Fellows* (1735) Cas temp Talb 93; *Savage v Carroll* (1810) 1 Ball & B 265; *Sandeman v Mackenzie* (1861) 1 John & H 613. See also *Wood v Wood* (1867) LR 4 Eq 48; *Re Prytherch, Prytherch v Williams* (1889) 42 ChD 590. As to the nature of portions see PARA 727 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iii) Portions/731. Illegitimate children.

731. Illegitimate children.

In a disposition made before 1970, a gift in favour of future illegitimate children is void as being contrary to public policy¹. Further, in such a disposition, a gift to 'the children' of a person *prima facie* does not include his illegitimate children², and other expressions which are a term of art denoting a person's relations *prima facie* do not include persons who are illegitimate, or who deduce the relationship through an illegitimate person³.

In a disposition made after 1969 and before 4 April 1988, a gift in favour of future illegitimate children is not void as being contrary to public policy⁴.

In dispositions made *inter vivos* on or after 4 April 1988 or by will or codicil executed on or after that date, references (however expressed) to any relationship between two persons, unless the contrary intention appears, are to be construed without regard to whether or not the father and mother of either of them, or the father and mother of any person through whom the relationship is deduced, have or had been married to each other at any time⁵. The use, without more, of the word 'heir' or 'heirs' or any expression purporting to create an entailed interest in real or personal property does not show a contrary intention for these purposes⁶. A disposition of real or personal property devolving with a dignity or title of honour is unaffected by these reforms⁷.

1 See PARA 617 ante.

2 *Hill v Crook* (1873) LR 6 HL 265. This *prima facie* rule does not apply if, to the settlor's knowledge, there is an impossibility or strong improbability of the person having legitimate children, or if the context indicates that the term 'children' is not confined to legitimate children: *Hill v Crook* *supra*; *Re Fletcher, Barclays Bank Ltd v Ewing* [1949] Ch 473, [1949] 1 All ER 732; *Re Jones Will Trusts, Jones v Hawtin Squire* [1965] Ch 1124, [1965] 2 All ER 828; *Re Jebb, Ward-Smith v Jebb* [1966] Ch 666, [1965] 3 All ER 358, CA. Cf *Re Brinkley's Will Trusts, Westminster Bank Ltd v Brinkley* [1968] Ch 407, [1967] 3 All ER 805. See also WILLS vol 50 (2005 Reissue) PARA 642.

3 *Sydall v Castings Ltd* [1967] 1 QB 302, [1966] 3 All ER 770, CA. See also note 2 *supra*.

4 See PARA 617 ante.

5 See the Family Law Reform Act 1987 ss 1, 19(1); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 125; WILLS vol 50 (2005 Reissue) PARA 644. As to dispositions in cases of adoption see PARA 733 post.

6 See *ibid* s 19(2) (as amended); and WILLS vol 50 (2005 Reissue) PARA 644.

7 See *ibid* s 19(4); and WILLS vol 50 (2005 Reissue) PARA 644.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iii) Portions/732. Legitimated children.

732. Legitimated children.

In a disposition made before 1976¹, subject to any contrary indication, a legitimated person and his spouse, children and more remote issue are entitled to take any interest under any disposition coming into operation after the date of the legitimation in like manner as if he had been born legitimate².

In a disposition made after 1975, subject to any contrary indication, a legitimated person and any other person, is entitled to take any interest as if the legitimated person had been born legitimate³.

1 The Legitimacy Act 1926 s 3 (see note 2) was repealed by the Children Act 1975 s 108(1)(b), Sch 4, Pt II (now itself repealed), but not in relation to instruments made before 1 January 1976: see s 8(9), Sch 1 paras 1(5), 12(9) (repealed); and the Legitimacy Act 1976 s 11(1), Sch 1 para 2. The regime introduced by the Family Law Reform Act 1969 s 15 in relation to dispositions made between 1969 and 1976 was repealed (with savings in relation to the operation of the Trustee Act 1925 s 33): see the Family Law Reform Act 1987 s 33(2), (4), Sch 3 para 9, Sch 4.

2 See the Legitimacy Act 1926 s 3 (repealed: see note 1 supra); and WILLS vol 50 (2005 Reissue) PARA 638. This does not apply to property settled to devolve (as nearly as the law permits) along with a dignity or title of honour: see s 3(3) (repealed: see note 1 supra). As to whether a legitimated child is entitled to take as a child 'of the marriage' of his parents see *Re Askew, Marjoribanks v Askew* [1930] 2 Ch 259; *Re Wicks Marriage Settlement, Public Trustee v Wicks* [1940] Ch 475; *Colquitt v Colquitt* [1948] P 19, [1947] 2 All ER 50, DC. As to the meaning of 'disposition' see *Re Billson's Settlement Trusts* [1984] Ch 409 at 415, [1984] 2 All ER 401 at 404, CA, per Browne-Wilkinson LJ ('disposition' means the instrument creating the interest, not the interest itself). As to whether a legitimated child is within the marriage consideration see PARA 661 note 2 ante.

3 See the Legitimacy Act 1976 s 5(3). This does not apply to property settled to devolve (as nearly as the law permits) along with a dignity or title of honour: see s 11, Sch 1 para 4(3); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 131.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iii) Portions/733. Adopted children.

733. Adopted children.

In a disposition made before 1950, an adoption order does not deprive the adopted child of any right to or in property to which, but for the order, the child would have been entitled under the disposition, whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adopter¹. Further, in a disposition made before 1950, whether made before or after the making of the adoption order, the expressions 'child', 'children' and 'issue' do not, unless the contrary intention appears, include an adopted child or children or the issue of an adopted child².

In a disposition made after 1949 and before 1976, being one made after the date of an adoption order: (1) any reference, whether express or implied, to the child or children of the adopter is, unless a contrary intention appears, to be construed as, or including a reference to, the adopted person; (2) any reference, whether express or implied, to the child or children of the adopted person's natural parents or either of them is, unless a contrary intention appears, to be construed as not being, or as not including, a reference to the adopted person; and (3) any reference, whether express or implied, to a person related to the adopted person in any degree refers to the person who would be related to him in that degree if he were the child of the adopter born in lawful wedlock and were not the child of any other person³.

The rights of an adopted child in respect of a disposition made after 1975 are set out elsewhere⁴.

1 See note 2 infra.

2 See the Adoption of Children Act 1926 s 5(2) (repealed by the Adoption of Children Act 1949 s 10(5), but continuing to apply to dispositions made before 1 January 1950, the date on which the latter Act came into operation: see the Interpretation Act 1978 s 16(1)). See also *Re Gilpin, Hutchinson v Gilpin* [1954] Ch 1, [1953] 2 All ER 1218. As to adoption see generally CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 323 et seq. As to whether a contrary intention appears for the purposes of the Adoption of Children Act 1926 s 5(2) (repealed) see the principle stated and the cases cited in PARA 731 note 2 ante.

3 See the Adoption Act 1958 s 16(2), replacing provisions formerly contained in the Adoption of Children Act 1949 s 3 (repealed), and the Adoption Act 1950 s 13(2) (repealed), and itself repealed by the Children Act 1975 s 108(1)(b), Sch 4 Pt I (repealed), but not so as to affect its application in relation to a disposition of property effected by an instrument made before 1 January 1976: see s 8(9), Sch 1 paras 1(5), 5(2) (repealed). The Adoption Act 1958 s 16(2) (repealed), does not affect the devolution of property limited (whether subject to any preceding limitation or charge or not) to devolve (as nearly as the law permits) with a dignity or title of honour: s 16(4) (repealed). The Adoption Act 1976 s 73(1), Sch 2 para 6(2), likewise provides that the Adoption Act 1958 s 16 (repealed), continues to apply to dispositions of property effected by instruments made before 1 January 1976.

4 See CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 375 et seq; WILLS vol 50 (2005 Reissue) PARA 645. As to whether an adopted child is within the consideration of marriage see PARA 661 note 2 ante. As to the succession rights of a child adopted under a foreign order see CONFLICT OF LAWS vol 8(3) (Reissue) PARA 348.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iii) Portions/734. Amount of portions.

734. Amount of portions.

The amount to be raised for portions may vary with the number of children to be provided for, and it is a matter of the construction of the particular settlement whether this amount depends upon the original number of children, where this has been reduced before the period of distribution, or the number who actually take¹. Where the paramount intention of the settlement is that, subject to the provision of portions, the settled property is to go to the eldest child, the trusts for portions will not come into operation at all if their only effect would be to benefit the personal representatives of a deceased younger child². However, when the trusts are certain, and the amount to be raised is certain, and the events have happened on the occurrence of which the trusts are expressed to come into operation, then the whole amount is raised for the benefit of the surviving portioner³. In the case of a marriage settlement, it is presumed that the intention of the parties is to make provision for every child of the marriage who requires it, and accordingly the court may construe the trust for portions according to the number of children attaining vested interests, and not according to the number of children born, even if this involves a departure from the strict grammatical construction⁴.

1 As to the nature of portions see PARA 727 ante.

2 *Hubert v Parsons* (1751) 2 Ves Sen 261. Cf *Clarke v Jessop* (1844) Drury temp Sug 301. See also *Hemming v Griffith, Griffith v Hemming* (1860) 2 Giff 403.

3 *Hemming v Griffith, Griffith v Hemming* (1860) 2 Giff 403; *Knapp v Knapp* (1871) LR 12 Eq 238. A portion which has once become vested is not divested by the death of the portioner before the period of distribution: *Willis v Willis* (1796) 3 Ves 51; *Vane v Lord Dungannon* (1804) 2 Sch & Lef 118. As to the vesting of portions see PARA 738 post.

4 *Rye v Rye* (1878) 1 LR Ir 413. As to marriage settlements see PARA 628 et seq ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iii) Portions/735. Time for raising portions.

735. Time for raising portions.

The time for raising portions depends in each case upon the construction of the particular settlement¹, but, as a general rule, if the portions are vested or the contingencies on which they are to be paid have happened, and they are required², they must be raised, even if to do so involves a considerable sacrifice and waste of property, as where the only means of raising them is by the sale or mortgage of a reversionary term³.

The following general rules have been deduced from the cases⁴:

- 73 (1) where a term is limited in remainder to commence in possession after the death of a parent, yet if the trust is to raise a portion payable at a fixed period, the child need not wait for the death of the parent before the portion is raised, but at the fixed period may compel a sale of the term⁵;
- 74 (2) where the period is not fixed by the original settlement, but depends on a contingency, that rule applies as soon as the contingency happens⁶;
- 75 (3) where not only the period, but the class of children in favour of whom the portions are to be raised, depends on a contingency, as where the term is limited to take effect in case the father dies without issue male by his wife, on the contingency happening on the death of either parent without issue male, the portions are to be raised immediately, and the term is saleable in the lifetime of the surviving parent⁷; and
- 76 (4) portions are not raised in the lifetime of the parents if there is a clear indication in the settlement to the contrary⁸.

1 *Codrington v Lord Foley* (1801) 6 Ves 364; *Smyth v Foley* (1838) 3 Y & C Ex 142; *Keily v Keily* (1843) 4 Dr & War 38; *Massy v Lloyd* (1863) 10 HL Cas 248. Where the trustees were to raise portions by sale or mortgage or any other reasonable means, with power at their discretion to postpone the raising of the portions, they were bound, when exercising their discretion, to consider the interests of the persons entitled to the estate as well as those of the portioners: *Re Sandys, Union of London and Smith's Bank v Litchfield* [1916] 1 Ch 511. As to the nature of portions see PARA 727 ante. As to the method of raising portions see PARA 737 post.

2 *Edgeworth v Edgeworth* (1829) Beat 328. As to the vesting of portions see PARA 738 post.

3 *Ravenhill v Dansey* (1723) 2 P Wms 179; *Codrington v Lord Foley* (1801) 6 Ves 364; *Whaley v Morgan* (1839) 2 Dr & Wal 330; *Massy v Lloyd* (1863) 10 HL Cas 248; *Re Lord Gisborough's Settled Estates* [1921] 2 Ch 39. See also *Reresby v Newland* (1723) 6 Bro Parl Cas 75; and *Re Sandys, Union of London and Smith's Bank v Litchfield* [1916] 1 Ch 511.

4 *Smyth v Foley* (1838) 3 Y & C Ex 142 at 157 per Alderson B.

5 *Hellier v Jones* (1689) 1 Eq Cas Abr 337; *Stanley v Stanley* (1737) 1 Atk 549; *Cotton v Cotton* (1738) 3 Y & C Ex 149n; *Smith v Evans* (1766) Amb 633; *Whaley v Morgan* (1839) 2 Dr & Wal 330; *Michell v Michell* (1842) 4 Beav 549. A portion to be raised by means of a term ceases to be raisable when the term comes to an end: *Re Marshall's Estate* [1899] 1 IR 96.

6 *Staniforth and Clerkson v Staniforth* (1703) 2 Vern 460; *Hebblethwaite v Cartwright* (1734) Cas temp Talb 31.

7 *Gerrard v Gerrard* (1703) 2 Vern 458; *Lyon v Duke of Chandos* (1746) 3 Atk 416; *Smyth v Foley* (1838) 3 Y & C Ex 142.

8 The court has found indications that portions are not to be raised in the lifetime of the parents in the following cases: *Corbett v Maydwell* (1710) 2 Vern 640 (portion for daughter unmarried or not provided for at

father's death); *Brome v Berkley* (1728) 2 P Wms 484 (direction for maintenance, which precedes portion, after trust estate chargeable with portion comes into possession); *Churchman v Harvey* (1757) Amb 335 (precedent estate of a jointress). Cf *Hall v Carter* (1742) 2 Atk 354.

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736. Anticipation in favour of portioners.

Whether the whole sum for portions is raisable as soon as part becomes payable depends upon the construction of the particular settlement, but in general the whole sum probably is so raisable¹. Although the time for raising portions may therefore be anticipated in favour of portioners whose interests have vested², it will not be anticipated in favour of the persons entitled to the inheritance³, in the absence of contrary indication in the settlement⁴.

1 *Gillibrand v Goold* (1833) 5 Sim 149; *Leech v Leech* (1842) 2 Dr & War 568; *Peareth v Greenwood* (1880) 28 WR 417. See, however, *Hays v Bailey* (1813) cited in 2 Dr & War 576; *Wynter v Bold* (1823) 1 Sim & St 507; *Sheppard v Wilson* (1845) 4 Hare 392. As to the nature of portions see PARA 727 ante; and as to the method of raising portions see PARA 737 post.

2 As to the vesting of portions see PARA 738 post.

3 *Oldfield v Oldfield* (1685) 1 Vern 336; *Sheppard v Wilson* (1845) 4 Hare 392 at 394. Contingent legacies may not be anticipated in favour of a devisee of land charged with them: *Dickenson v Dickenson* (1789) 3 Bro CC 19.

4 *Marsh v Keith* (1861) 29 Beav 625.

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737. Method of raising portions.

Where a settlement directs a particular method of raising portions, they cannot be raised in any other way¹. If no method is directed, they may be raised by a sale or mortgage². In deciding between a sale or mortgage, the court has regard to the wishes of the persons immediately interested³. An express prohibition against raising portions by sale excludes the possibility of raising them by mortgage⁴.

If portions are directed to be raised out of land they cannot be raised out of personalty⁵. A power to charge portions on land authorises a charge on any part of land⁶, and a direction to raise portions out of rents and profits will enable them to be raised out of corpus⁷, unless they are directed to be raised only out of annual rents and profits⁸ or there are other indications that they are to be raised out of the rents and profits as they accrue⁹.

If the trustees have power to raise portions either by sale or mortgage or out of the rents and profits, then, in the absence of an indication to the contrary in the settlement, they should charge the principal on the inheritance and secure the application of the annual profits to keep down the interest on the portions¹⁰. Where the ordinary profits of a term are insufficient to raise the portions, timber may be felled or a mine may be worked¹¹.

The costs of raising portions are payable out of the estate and not out of the portions¹², but the costs of dealing with the portions must be borne by the portioners themselves¹³.

1 *Ivy v Gilbert* (1722) 2 P Wms 13 (affd (1723) 6 Bro Parl Cas 68, HL); *Mills v Banks* (1724) 3 P Wms 1; *Bennett v Wyndham* (1857) 23 Beav 521 (on appeal (1862) 4 De GF & J 259). A portion to be raised by means of a term ceases to be raisable when the term comes to an end: *Re Marshall's Estate* [1899] 1 IR 96. As to the nature of portions see PARA 727 ante.

2 *Meynell v Massey* (1686) 2 Vern 1; *Kelly v Lord Bellew* (1707) 4 Bro Parl Cas 495, HL; *Ashton v--* (1718) 10 Mod Rep 401.

3 *Metcalfe v Hutchinson* (1875) 1 ChD 591. A sale may be ordered at the instance of the person entitled to the estate against the wishes of the portioners: *Warburton v Warburton* (1701) 2 Vern 420; on appeal (1702) 4 Bro Parl Cas 1, HL. As to the duty of the trustees to consider the interests both of the persons entitled to the estate and of the portioners see *Re Sandys, Union of London and Smith's Bank v Litchfield* [1916] 1 Ch 511. As to the sale or mortgage of a reversionary term see PARA 735 text and note 3 ante.

4 *Bennett v Wyndham* (1857) 23 Beav 521; on appeal (1862) 4 De GF & J 259.

5 *Edwards v Freeman* (1727) 2 P Wms 435; *Burgoigne v Fox* (1738) 1 Atk 575; *Lechmere v Charlton* (1808) 15 Ves 193.

6 *Mosley v Mosley* (1800) 5 Ves 248. As to the apportionment of a charge see *Otway-Cave v Otway* (1866) LR 2 Eq 725.

7 *Backhouse v Middleton* (1670) 1 Cas in Ch 173; *Sheldon v Dormer* (1693) 2 Vern 309; *Blagrave v Clunn* (1706) 2 Vern 576; *Trafford v Ashton* (1718) 1 P Wms 415; *Green v Belchier* (1737) 1 Atk 505; *Okeden v Okeden* (1738) 1 Atk 550; *Allan v Backhouse* (1813) 2 Ves & B 65 (affd (1821) Jac 631). Cf *Phillips v Gutteridge* (1862) 3 De GJ & Sm 332; *Pearson v Helliwell* (1874) LR 18 Eq 411; *Re Buchanan, Stephens v Draper* [1915] 1 IR 95, Ir CA. See also *Countess of Shrewsbury v Earl of Shrewsbury* (1790) 1 Ves 227 at 234; *Bootle v Blundell* (1815) 1 Mer 193 at 233; *Metcalfe v Hutchinson* (1875) 1 ChD 591.

8 *Stanhope v Thacker* (1716) Prec Ch 435; *Trafford v Ashton* (1718) 1 P Wms 415. Cf *Re Green, Baldock v Green* (1888) 40 ChD 610.

9 *Ivy v Gilbert* (1722) 2 P Wms 13 (affd (1723) 6 Bro Parl Cas 68, HL); *Mills v Banks* (1724) 3 P Wms 1; *Green v Belchier* (1737) 1 Atk 505. Cf *Ridout v Earl of Plymouth* (1740) 2 Atk 104; *Stone v Theed* (1787) 2 Bro CC 243; *Wilson v Halliley* (1830) 1 Russ & M 590; *Foster v Smith* (1846) 1 Ph 629; *Earle v Bellingham (No 1)* (1857) 24 Beav 445. See also *Evelyn v Evelyn* (1731) 2 P Wms 659; *Warter v Hutchinson* (1823) 1 Sim & St 276; *Balfour v Cooper* (1883) 23 ChD 472, CA.

10 *Marker v Kekewich* (1850) 8 Hare 291; *Kekewich v Marker* (1851) 3 Mac & G 311; *Re Marquess of Bute, Marquess of Bute v Ryder* (1884) 27 ChD 196.

11 *Offley v Offley* (1691) Prec Ch 26; *Marker v Kekewich* (1850) 8 Hare 291; *Marker v Marker* (1851) 9 Hare 1; *Kekewich v Marker* (1851) 3 Mac & G 311; *Bennett v Wyndham* (1857) 23 Beav 521 (on appeal (1862) 4 De GF & J 259).

12 *Michell v Michell* (1842) 4 Beav 549; *Armstrong v Armstrong* (1874) LR 18 Eq 541.

13 *Stewart v Marquis of Donegal* (1845) 2 Jo & Lat 636.

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738. Vesting of portions.

Portions charged on land and payable at a future time do not in general vest until the time appointed for payment¹. If no time for payment is specified, they vest traditionally on the attainment of the age of 21² or on marriage on the principle that a portion does not vest until it is wanted³. Upon the death of the portioner before the time appointed for payment the portion sinks into the inheritance⁴. On the other hand, if portions are directed to be raised out of the rents and profits of land, but no time is mentioned for payment, they are payable presently and become an immediate vested interest, and the representatives of a child who dies during his minority are entitled to that child's portion⁵.

However, if the payment of portions is postponed, not from any consideration personal to the portioner, but for the convenience of the estate, as where it is postponed until after the death of the tenant for life, the portions will nevertheless vest before the time appointed for payment, even if the term out of which they are to be raised may not then have arisen⁶. However, this rule will yield to a contrary intention in the settlement, so that the personal representatives of a deceased portioner who had attained 21 or married will be excluded if the settlement provides either that the right to a portion depends upon the portioner surviving both or either of his parents⁷, or that the issue of a deceased portioner should take by substitution their parent's share in the portion fund⁸.

1 As to the nature of portions see PARA 727 ante.

2 There have been no reported cases on the point since the age of majority was reduced to 18, as to which see PARA 605 note 1 ante.

3 *Warr v Warr* (1702) Prec Ch 213; *Bruen v Bruen* (1702) 2 Vern 439; *Remnant v Hood* (1860) 2 De GF & J 396; *Davies v Huguenin* (1863) 1 Hem & M 730; *Haverty v Curtis* [1895] 1 IR 23. In the case of a marriage settlement (see PARA 628 et seq ante), there is a strong presumption that the shares of the children are to become vested in the case of sons at 21 (see note 2 supra), and in the case of daughters at 21 or marriage: *Re Willmott's Trusts* (1869) LR 7 Eq 532 at 537 per James V-C. The same rule applies where the portion is payable out of personality: *Jeffreys v Reynous* (1767) 6 Bro Parl Cas 398; *Schenck v Legh* (1803) 9 Ves 300; *Perfect v Lord Curzon* (1820) 5 Madd 442; *Swallow v Binns* (1855) 1 K & J 417. Cf *Bayard v Smith* (1808) 14 Ves 470.

4 *Lady Poulet v Lord Poulet* (1685) 1 Vern 204 at 321; *Carter v Bletsoe* (1708) 2 Vern 617; *Prowse v Abingdon* (1738) 1 Atk 482 (commenting on *Jackson v Farrand* (1701) 2 Vern 424); *Boycot v Cotton* (1738) 1 Atk 552; *Ruby v Foot and Beamish* (1817) Beat 581; *Edgeworth v Edgeworth* (1829) Beat 328; *Evans v Scott* (1847) 1 HL Cas 43; *Remnant v Hood* (1860) 2 De GF & J 396; *Bagge v Bagge* [1921] 1 IR 213. Cf *Henty v Wrey* (1882) 21 ChD 332 at 359, CA. A power to charge portions may be validly exercised and the portions may be raisable, notwithstanding that no portioner attains a vested interest: *Fosberry v Smith* (1856) 5 1 Ch R 321. See also *Simmons v Pitt* (1873) 8 Ch App 978. Cf the vesting of legacies: see WILLS vol 50 (2005 Reissue) PARA 696 et seq.

5 *Earl Rivers v Earl of Derby* (1688) 2 Vern 72 (affd (1689) 14 Lords Journals 195, HL); *Evelyn v Evelyn* (1731) 2 P Wms 659; *Cowper v Scott* (1731) 3 P Wms 119. The same rule applies in the case of portions payable out of personality (*Lady Poulet v Lord Poulet* (1685) 1 Vern 204 (affd 14 Lords Journals 87, HL); *Gordon v Raynes* (1732) 3 P Wms 134; *Prowse v Abingdon* (1738) 1 Atk 482; *Mount v Mount* (1851) 13 Beav 333; *Currie v Larkins* (1864) 4 De GJ & Sm 245; *Jopp v Wood* (1865) 2 De GJ & Sm 323), unless a contrary intention appears in the settlement (*Mostyn v Mostyn* (1844) 1 Coll 161 at 167; *Re Colley's Trusts* (1866) LR 1 Eq 496. See also *Re Dennis's Trusts* (1857) 6 1 Ch R 422).

6 *Emperor v Rolfe* (1748-9) 1 Ves Sen 208; *Cholmondeley v Meyrick* (1758) 1 Eden 77; *Rooke v Coke* (1761) 2 Eden 8; *Woodcock v Duke of Dorset* (1792) 3 Bro CC 569; *Willis v Willis* (1796) 3 Ves 51; *Hope v Lord Clifden* (1801) 6 Ves 499; *Powis v Burdett* (1804) 9 Ves 428; *King v Hake* (1804) 9 Ves 438; *Howgrave v Cartier* (1814) 3 Ves & B 79; *Fry v Lord Sherborne* (1829) 3 Sim 243; *Evans v Scott* (1847) 1 HL Cas 43; *Remnant v Hood*

(1860) 2 De GF & J 396; *Wakefield v Maffet* (1885) 10 App Cas 422, HL; *Waller v Stevenson* (1912) 56 Sol Jo 666, HL.

7 *Wingrave v Palgrave* (1717) 1 P Wms 401; *Howgrave v Cartier* (1814) 3 Ves & B 79 at 85; *Hotchkin v Humfrey* (1817) 2 Madd 65; *Fitzgerald v Field* (1826) 1 Russ 416; *Whatford v Moore* (1837) 3 My & Cr 270; *Skipper v King* (1848) 12 Beav 29; *Jeffrey v Jeffrey* (1849) 17 Sim 26. Cf *Gordon v Raynes* (1732) 3 P Wms 134; *Worsley v Earl of Granville* (1751) 2 Ves Sen 331.

8 *Re Wilmott's Trusts* (1869) LR 7 Eq 532 (commenting on *Mocatta v Lindo* (1837) 9 Sim 56; and *Mendham v Williams* (1866) LR 2 Eq 396); *Jeyes v Savage* (1875) 10 Ch App 555; *Day v Radcliffe* (1876) 3 ChD 654; *Selby v Whittaker* (1877) 6 ChD 239, CA.

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739. Interest on portions.

If there is no direction in the settlement as to interest, portions carry interest¹ from the time when they ought to be raised², but not from the time when the title to the portion vests³. The interest should be paid annually and not allowed to accumulate⁴. Where there is a power of charging interest on a portion it is considered as maintenance⁵, and no interest is given on arrears⁶.

The donee of a power to charge has a right to fix the rate of interest⁷, but this rule does not apply where the trustees have a trust vested in them to raise a specific sum of money, and the only power given to anybody in connection with the money so raised is to state in what proportion the money is to be divided between the parties and at what time it is to be payable⁸.

In the absence of any express direction a portion carries interest at the rate current in the country where the land charged is situated, which rate in England is traditionally 4 per cent⁹.

1 *Clayton v Earl of Glengall* (1841) 1 Dr & War 1. A contrary intention may be implied from the terms of the instrument creating the trust: *Selby v Gillum* (1836) 2 Y & C Ex 379; *Bredin v Bredin* (1841) 1 Dr & War 494. As to interest by way of maintenance on portions arising under a settlement by a parent or person in loco parentis see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 58 et seq. As to the nature of portions see PARA 727 ante.

2 *Lord Roseberry v Taylor* (1702) 6 Bro Parl Cas 43, HL; *Bagenal v Bagenal* (1725) 6 Bro Parl Cas 81, HL; *Evelyn v Evelyn* (1731) 2 P Wms 659 at 669, HL; *Conway v Conway* (1791) 3 Bro CC 267. See also *Lyddon v Lyddon* (1808) 14 Ves 558; and POWERS.

3 *Churchman v Harvey* (1757) Amb 335; *Massy v Lloyd* (1863) 10 HL Cas 248. See also *Reynolds v Meyrick* (1758) 1 Eden 48; *Gardner v Perry* (1851) 20 L J Ch 429, where, however, the decision seems to have turned on the language of the particular instrument. As to the vesting of portions see PARA 738 ante.

4 *Boycot v Cotton* (1738) 1 Atk 552.

5 *Boycot v Cotton* (1738) 1 Atk 552.

6 *Mellish v Mellish* (1808) 14 Ves 516.

7 *Boycot v Cotton* (1738) 1 Atk 552; *Lewis v Freke* (1794) 2 Ves 507. See also *Balfour v Cooper* (1883) 23 ChD 472, CA.

8 *Balfour v Cooper* (1883) 23 ChD 472, CA.

9 *Sitwell v Bernard* (1801) 6 Ves 520; *Young v Lord Waterpark* (1842) 13 Sim 199 (on appeal (1845) 15 L J Ch 63); *Balfour v Cooper* (1883) 23 ChD 472, CA; *Re Drax, Savile v Drax* [1903] 1 Ch 781, CA. See also POWERS. As to rates of interest generally see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1303 et seq; and PARA 945 note 5 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iv) Conditions of Defeasance/740. Conditions of defeasance generally.

(iv) Conditions of Defeasance

740. Conditions of defeasance generally.

Conditions of defeasance, also known as shifting clauses, forfeiture clauses or defeasance clauses¹, are provisions inserted in settlements for the purpose of shifting the estates from the persons taking under the settlement on the happening of a contingency specified in the clause². Such clauses must be so framed as to take effect within the period laid down by the rule against perpetuities³, and if so expressed as to be divisible they may be good in one event and bad in another⁴.

1 See eg *Clayton v Ramsden*[1943] AC 320 at 326, [1943] 1 All ER 16 at 17, HL, per Lord Russell of Killowen, and at 329 and 19 per Lord Wright; *Bromley v Tryon*[1952] AC 265 at 267, 271, [1951] 2 All ER 1058 at 1060, 1063, HL, per Lord Simonds LC.

2 For examples of such contingencies see PARA 741 et seq post.

3 As to the rule against perpetuities and its applicability to conditions see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1008 et seq. If the condition is not limited to the perpetuity period, but the Perpetuities and Accumulations Act 1964 applies, the 'wait and see' rule applies to the condition: see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1009.

4 *Miles v Harford*(1879) 12 ChD 691.

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741. Events bringing the clause into operation.

Conditions of defeasance are commonly employed to carry over the settled estate in the event of accession to another estate¹, but they may also be employed to impose a penalty for a failure to comply with a condition contained in the settlement. Examples of the matters commonly required by such conditions are the profession of a specified religion², compliance with a name and arms clause³ or residence at a specified place⁴.

1 See PARA 743 post. As to conditions of defeasance generally see PARA 740 ante.

2 See eg the cases referred to in PARA 742 note 4 post.

3 See PARA 745 et seq post.

4 Residence implies not domicile but personal presence in the locality at some time or other, not necessarily involving the spending of a night there: *Walcot v Botfield* (1854) Kay 534. A condition requiring residence for a fixed period in every year in a house comprised in the settlement is valid, and requires personal residence: *Walcot v Botfield* supra; *Wynne v Fletcher* (1857) 24 Beav 430; *Dunne v Dunne* (1885) 7 De GM & G 207; *Re Wright, Mott v Issott* [1907] 1 Ch 231; *Re Vivian v Swansea* (1920) 36 TLR 222 (affd 36 TLR 657, CA); but cf *Re Moir, Warner v Moir* (1884) 25 ChD 605. If no period is fixed, the condition may be void for uncertainty: see PARA 742 post. Absence on official duty is not a breach of such a condition: *Re Adair and Settled Land Act* [1909] 1 IR 311. The condition as to residence is now less important, in as much as it may be defeated by the exercise of the powers of sale and leasing conferred by the Settled Land Act 1925 ss 38-43 (as amended): see PARA 827 et seq post. However, the condition is effectual so far as it does not hinder the tenant for life from disposing of the property: *Re Haynes, Kemp v Haynes* (1887) 37 ChD 306; *Re Trenchard, Trenchard v Trenchard* [1902] 1 Ch 378; *Re Adair and Settled Land Act* supra; *Re Acklom, Oakeshott v Hawkins* [1929] 1 Ch 195; *Re Orlebar, Orlebar v Orlebar* [1936] Ch 147.

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742. Requirement of certainty.

In order to be valid, conditions of defeasance¹ must be so framed that the persons affected, or the court, if they seek its guidance, can from the outset know with certainty the exact event on the happening of which their interests are to be divested². If the court cannot say with reasonable certainty, from the moment of the creation of the estate, in what event the defeasance will occur, the condition will be void³, but if the condition is clearly expressed, it is not necessary that the words of the condition should be of such a character that the question whether forfeiture has or has not occurred can be ascertained, not only with certainty, but with perfect ease⁴.

1 As to conditions of defeasance generally see PARA 740 ante.

2 *Fillingham v Bromley* (1823) Turn & R 530; *Clavering v Ellison* (1859) 7 HL Cas 707 at 725; *Clayton v Ramsden* [1943] AC 320, [1943] 1 All ER 16, HL. See also *Re Viscount Exmouth, Viscount Exmouth v Praed* (1883) 23 ChD 158 at 164; *Re Sandbrook, Noel v Sandbrook* [1912] 2 Ch 471 at 477; *Re Hanlon, Heads v Hanlon* [1933] Ch 254; *Sifton v Sifton* [1938] AC 656, [1938] 3 All ER 435, PC. However, if the condition is clearly expressed, it is not necessary that the donee be in a position at all times to know whether he is committing a breach of it: *Re Lanyon, Lanyon v Lanyon* [1927] 2 Ch 264. For discussion of the rule see *Sifton v Sifton* supra; *Bromley v Tryon* [1952] AC 265, [1951] 2 All ER 1058, HL. Although a gift over will normally only take effect if the event expressly mentioned occurs, it will also take effect by implication if it must, a fortiori, have been intended to operate in some other event: *Jones v Westcomb* (1711) Prec Ch 316; *Re Fox's Estate, Dawes v Druitt* [1937] 4 All ER 664, CA; *Re Bowen, Treasury Solicitor v Bowen* [1949] Ch 67, [1948] 2 All ER 979. As to certainty in connection with trusts and powers see *Whishaw v Stephens* [1970] AC 508, [1968] 3 All ER 785, HL; *McPhail v Doulton* [1971] AC 424, [1970] 2 All ER 228, HL; *Re Baden's Deed Trusts (No 2)* [1973] Ch 9, [1972] 2 All ER 1304, CA; and TRUSTS vol 48 (2007 Reissue) PARA 655.

3 As to the distinction between conditions subsequent and conditions precedent (which are valid unless their terms are such that it is impossible to give them any meaning at all) see *Re Allen, Faith v Allen* [1953] Ch 810, [1953] 2 All ER 898, CA; *Re Wolfe's Will Trusts, Shapley v Wolfe* [1953] 2 All ER 697, [1953] 1 WLR 1211; *Re Selby's Will Trusts, Donn v Selby* [1965] 3 All ER 386, [1966] 1 WLR 43; *Re Barlow's Will Trusts* [1979] 1 All ER 296, [1979] 1 WLR 278. See, however, *Re Perry Almshouses* [1898] 1 Ch 391 (affd [1899] 1 Ch 21, CA); *Re Tarnpolsk, Barclays Bank Ltd v Hyer* [1958] 3 All ER 479, [1958] 1 WLR 1157. As to the distinction between conditions subsequent and determinable limitations see *Re Viscount Exmouth, Viscount Exmouth v Praed* (1883) 23 ChD 158; *Re Wilkinson, Page v Public Trustee* [1926] Ch 842. A condition relating to religion is not void as being contrary to public policy on the ground of impermissible discrimination or on the ground that it might influence parents as to how to bring up their child: *Blathwayt v Baron Cawley* [1976] AC 397, [1975] 3 All ER 625, HL.

4 *Re Lanyon, Lanyon v Lanyon* [1927] 2 Ch 264; *Sifton v Sifton* [1938] AC 656 at 671, [1938] 3 All ER 435 at 442, HL; *Re Gape, Verey v Gape* [1952] Ch 743, [1952] 2 All ER 579, CA. Even if the condition is valid, the court will construe it strictly, and lean against defeasance: see *Clavering v Ellison* (1859) 7 HL Cas 707; *Walmesley v Gerard* (1861) 29 Beav 321; *Re Hinckes, Dashwood v Hinckes* [1921] 1 Ch 475, CA.

The following cases are examples of conditions held to be void for uncertainty:

1 (1) conditions relating to religion: see *Re Blaiberg, Blaiberg and Public Trustee v De Andia Yrarrzaval and Blaiberg* [1940] Ch 385, [1940] 1 All ER 632; *Re Donn, Donn v Moses* [1944] Ch 8, [1943] 2 All ER 564, HL; *Re Moss's Trusts, Moss v Allen* [1945] 1 All ER 207; *Re Wolfe's Will Trusts, Shapley v Wolfe* [1953] 2 All ER 697, [1953] 1 WLR 1211 (marriage to a person of the Jewish faith and the child of Jewish parents); *Re Tarnpolsk, Barclays Bank Ltd v Hyer* [1958] 3 All ER 479, [1958] 1 WLR 1157 (of the Jewish race and religion); *Clayton v Ramsden* [1943] AC 320, [1943] 1 All ER 16, HL (of Jewish faith and parentage); *Re Krawitz's Will Trusts, Krawitz v Crawford* [1959] 3 All ER 793, [1959] 1 WLR 1192 (practise the Jewish religion); *Re Tegg, Public Trustee v Bryant* [1936] 2 All ER 878 (conform to and be members of the Church of England). See, however, the cases relating to religion cited infra;

- 2 (2) conditions relating to residence: *Fillingham v Bromley* (1823) Turn & R 530 (live and reside); *Re M'Cleary, Moffat v M'Cleary* [1923] 1 IR 16 (come to live); *Sifton v Sifton* [1938] AC 656, [1938] 3 All ER 435, PC (continue to reside in Canada). Such conditions are valid, however, where the requirement of residence relates to a house comprised in a settlement: see PARA 741 note 4 ante; and
- 3 (3) other conditions: see *Clavering v Ellison* (1859) 7 HL Cas 707 (being educated abroad); *Duddy v Gresham* (1878) 2 LR Ir 442, Ir CA (retire to a convent etc); *Jeffreys v Jeffreys* (1901) 84 LT 417 (not to associate, correspond with or visit certain persons); *Re Gassiot, Brougham v Rose-Gassiot* (1907) 51 Sol Jo 570 (as to taking name); *Re Sandbrook, Noel v Sandbrook* [1912] 2 Ch 471 (child to be under control of father); *Re Reich, Public Trustee v Guthrie* (1924) 40 TLR 398 (to adopt and carry on a profession); *Re Murray, Martins Bank Ltd v Dill* [1955] Ch 69, [1954] 3 All ER 129, CA (to assume surname). Cf *Re Neeld, Carpenter v Inigo-Jones* [1962] Ch 643, [1962] 2 All ER 335, CA.

As to examples of conditions, some being conditions precedent, held to be not uncertain, but such as the court enforces see *Tattersall v Howell* (1816) 2 Mer 26 (donee to give up low company etc); *Maud v Maud* (1860) 27 Beav 615 ('should she follow the paths of virtue' etc); *Evanturel v Evanturel* (1874) LR 6 PC 1 (not to dispute will); *Re Moore's Trusts, Lewis v Moore* (1906) 96 LT 44 (donee to marry person of ample fortune to maintain her in comfort and affluence); *Patton v Toronto General Trusts Corp* [1930] AC 629, PC (to be of the Lutheran religion); *Re Hanlon, Heads v Hanlon* [1933] Ch 254 (not to marry or live or misconduct himself with a named person); *Re Talbot-Ponsonby's Estate, Talbot-Ponsonby v Talbot-Ponsonby* [1937] 4 All ER 309 (to make an estate the devisee's home and not to let a named person set foot on the property); *Re Evans, Hewitt v Edwards* [1940] Ch 629 (become a convert to the Roman Catholic religion); *Bromley v Tryon* [1952] AC 265, [1951] 2 All ER 1058, HL (to succeed to the bulk of the estate); *Re Gape, Verey v Gape* [1952] Ch 743, [1952] 2 All ER 579, CA (permanent residence); *Re Allen, Faith v Allen* [1953] Ch 810, [1953] 2 All ER 898, CA (member of the Church of England and adherent of its doctrine); *Re Neeld, Carpenter v Inigo-Jones* supra (to use surname on all occasions and bear arms); *Re Selby's Will Trusts, Donn v Selby* [1965] 3 All ER 386, [1966] 1 WLR 43 (marrying out of the Jewish faith); *Blathwayt v Baron Cawley* [1976] AC 397, [1975] 3 All ER 625, HL; *Re Tuck's Settlement Trusts, Public Trustee v Tuck* [1978] Ch 49, [1978] 1 All ER 1047, CA (condition referring to the Jewish faith and of Jewish blood). A gift to trustees upon trust for a person if he behaves well, and to their satisfaction, may sometimes be construed as giving them only a discretion to deprive him of the gift as a condition subsequent: see *Kingsman v Kingsman* (1706) 2 Vern 559; *Re Coe's Trust* (1858) 4 K & J 199; *Re Drax, Baroness Dunsany v Sawbridge* (1906) 75 LJ Ch 317.

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743. Conditions of defeasance on succession to the principal family estate.

Conditions providing for defeasance in the event of succession to the principal family estate used to be commonly found in settlements of realty. There are five points which deserve special attention¹

- 77 (1) The event in which the defeasance is to occur must be accurately described². The condition, like all conditions of defeasance³, is strictly construed⁴, so that a direction that it is to take effect on a person's accession to the principal family estate is not satisfied by his succeeding to a part of it, however large⁵; or by his succeeding to the whole, if it is charged with an incumbrance to which it was not, in fact or in contingency, liable when the settlement was framed⁶; or by accession to the principal family estate under a subsequent and independent instrument or by act of law⁷.
- 78 (2) The clause should describe accurately what estates or interests the younger brother solely, or both the younger brother and his issue male, are to take in the principal family estate, so as to give the clause the effect of making the second estate shift from them⁸.
- 79 (3) Equal attention must be observed in describing the person to whom the settlor wishes the second estate to devolve when the party accedes to the principal family estate⁹.
- 80 (4) It is also necessary to provide for the case where the next taker is not in existence at the time of defeasance, but may afterwards come into being, and to direct the destination of the intermediate rents and profits¹⁰.
- 81 (5) In many cases it is necessary to provide for the return of the principal family estate to the person from whom it has been divested by the condition of defeasance, in order to prevent it from devolving upon collateral relations of the settlor under the ultimate limitations in the settlement while there should still be issue of his own body¹¹.

1 See Co Litt 327a, Butler's note. As to conditions of defeasance generally see PARA 740 ante.

2 If the estate is stated to be divested because other provision has been made for the person from whom it is taken, the gift over fails if the provision turns out not to have been made: *Carter v Earl of Dicke* (1871) 41 LJ Ch 153. As to when a gift over will take effect by implication see PARA 742 note 2 ante.

3 See PARAS 740-742 ante.

4 *Walmsley v Gerard* (1861) 29 Beav 321; *Re Hinckes, Dashwood v Hinckes* [1921] 1 Ch 475, CA. Cf *Bromley v Tryon* [1952] AC 265, [1951] 2 All ER 1058, HL. In construing such conditions, the words 'eldest' or 'younger' son are always read and construed in their primary significance (see *Scarisbrick v Eccleston* (1838) 5 Cl & Fin 398, HL; *Wilbraham v Scarisbrick* (1847) 1 HL Cas 167; cf *Meredith v Treffry* (1879) 12 ChD 170; and PARA 728 ante), unless it is impossible to interpret the shifting clause according to the literal meaning of the words (*Bathurst v Errington* (1877) 2 App Cas 698, HL).

5 *Meyrick v Laws, Meyrick v Mathias* (1874) 9 Ch App 237; *Gardiner v Jellicoe* (1862) 12 CBNS 568 (affd (1865) 11 HL Cas 323); *Re Hinckes, Dashwood v Hinckes* [1921] 1 Ch 475, CA. Cf *Bromley v Tryon* [1952] AC 265, [1952] 2 All ER 1058, HL. See also *Stackpoole v Stackpoole* (1843) 2 Con & Law 489; *Micklethwait v Micklethwait* (1859) 4 CBNS 790.

6 See *Fazakerley v Ford* (1831) 4 Sim 390; *Harrison v Round* (1852) 2 De GM & G 190; *Meyrick v Laws, Meyrick v Mathias* (1874) 9 Ch App 237.

7 *Taylor v Earl of Harewood* (1844) 3 Hare 372; *Meyrick v Laws, Meyrick v Mathias* (1874) 9 Ch App 237. Whether a resettlement confers an independent title depends upon whether the estate descends in the mode in which it was limited to descend under the principal settlement: *Harrison v Round* (1852) 2 De GM & G 190. Cf *Fazakerley v Ford* (1831) 4 Sim 390; *Monypenny v Dering* (1852) 2 De GM & G 145; *Re Meeking, Meeking v Meeking* [1922] 2 Ch 523.

8 *Bagot v Legge* (1864) 10 Jur NS 994. 'Entitled' in such a clause means beneficially entitled in possession: see *Chorley v Loveband* (1863) 33 Beav 189; *Umbers v Jaggard* (1870) LR 9 Eq 200; and PARA 744 note 2 post. A person does not come into possession of an estate for the purposes of a shifting clause by becoming entitled to an estate in remainder either for life (see *Monypenny v Dering* (1852) 2 De GM & G 145; *Curzon v Curzon* (1859) 1 Giff 248), or in tail (*Bagot v Legge* (1864) 10 Jur NS 994), or by actual possession obtained as a purchaser for value, a mortgagee from the owner, a tenant from year to year, or a lessee for years rendering rent, a judgment creditor, or (formerly) tenant by elegit (*Taylor v Earl of Harewood* (1844) 3 Hare 372 at 386). See also *Leslie v Earl of Rothes* [1894] 2 Ch 499, CA; *Re Hinckes, Dashwood v Hinckes* [1921] 1 Ch 475, CA. A person may be entitled in possession notwithstanding that the whole income of the property is eaten up by charges and that there are no surplus rents and profits: *Re Varley, Thornton v Varley* (1893) 62 LJ Ch 652.

9 A direction that, on defeasance, the estate divested from a tenant for life should devolve upon the person next entitled in remainder, or should devolve as though the tenant for life were dead, may cause it to devolve upon the son of the tenant for life (*Bagot v Legge* (1864) 10 Jur NS 994) or, formerly, upon the trustees to preserve contingent remainders to unborn sons of the tenant for life whose estate had determined (see *Doe d Heneage v Heneage* (1790) 4 Term Rep 13; *Stanley v Stanley* (1809) 16 Ves 491; *Morrice v Langham* (1840) 11 Sim 260; *Lambarde v Peach* (1859) 4 Drew 553; *Turton v Lambarde, Lambarde v Turton* (1860) 1 De GF & J 495). A limitation that the estate should devolve as though the tenant for life had died without issue causes it to devolve upon the next vested remainderman: *Carr v Earl of Erroll* (1805) 6 East 59; *Doe d Lumley v Earl of Scarborough* (1835) 3 Ad & El 2 (revsd without affecting this point, sub nom *Earl of Scarborough v Doe d Savile* (1836) 3 Ad & El 897, Ex Ch); *Re Harcourt, Fitzwilliam v Portman* [1920] 1 Ch 492. See also *Morrice v Langham* (1841) 8 M & W 194; *Sanford v Morrice* (1844) 11 Cl & Fin 667, HL. For a case where 'die without issue' was held to mean die without issue of a particular class see *Jellicoe v Gardiner* (1865) 11 HL Cas 323; but see *Doe d Lumley v Earl of Scarborough* supra.

10 If an intention to dispose of the beneficial interest is either expressed in the instrument on which the question arises, or can be gathered from its provisions, the rents and profits cannot result to the settlor, and the next remainderman takes them (*Turton v Lambarde, Lambarde v Turton* (1860) 1 De GF & J 495; *D'Eyncourt v Gregory* (1864) 34 Beav 36; cf *Re Conyngham, Conyngham v Conyngham* [1921] 1 Ch 491, CA); but, if no such intention is expressed in or can be gathered from the instrument, the intermediate rents and profits revert to the settlor (*Stanley v Stanley* (1809) 16 Ves 491; *Lambarde v Peach* (1859) 4 Drew 553).

11 See *Trevor v Trevor* (1842) 13 Sim 108; on appeal (1847) 1 HL Cas 239.

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744. Time when condition takes effect.

A condition of defeasance¹ takes effect immediately on the happening of the specified event, and there is no difference for this purpose whether the clause is expressed to take effect 'then' or 'then and immediately thereupon'². If it is to operate as often as the event referred to should recur, this should appear from its terms, but an intention may be gathered from the meaning of the clause as a whole in the absence of express words³. A condition will normally be treated as not requiring compliance by the beneficiary before he attains his majority⁴.

1 As to conditions of defeasance generally see PARA 740 ante.

2 *Cope v Earl De La Warr* (1873) 8 Ch App 982. A life tenant of property specifically devised does not become entitled to the actual receipt of the rents and profits of the property until either a vesting assent has been executed or he is entitled to call for a vesting assent: *Re Needl, Carpenter v Inigo-Jones* [1962] Ch 643, [1962] 2 All ER 335, CA. See also *Re Gape, Verey v Gape* [1952] Ch 743, [1952] 2 All ER 579, CA; *Blathwayt v Baron Cawley* [1976] AC 397, [1975] 3 All ER 625, HL; and PARA 743 note 8 ante.

3 *Doe d Lumley v Earl of Scarborough* (1835) 3 Ad & El 2 at 38. See, however, *Earl of Scarborough v Doe d Savile* (1836) 3 Ad & El 897 at 964, Ex Ch; *Monypenny v Dering* (1852) 2 De GM & G 145 at 188.

4 *Partridge v Partridge* [1894] 1 Ch 351; *Re May, Eggar v May* [1917] 2 Ch 126; *Patton v Toronto General Trusts Corp* [1930] AC 629, PC; *Blathwayt v Baron Cawley* [1976] AC 397, [1975] 3 All ER 625, HL. See also PARA 745 note 8 post.

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745. Name and arms clauses.

A common use of a condition of defeasance formerly was to compel compliance with a name and arms clause by which a settlor imposed upon all persons succeeding to the estate under the settlement an obligation to take his name¹ and bear his arms². Such a clause first indicates the persons on whom the obligation is imposed, that is, every person becoming entitled³ under the settlement as tenant for life or tenant in tail male, or in tail, to the possession or receipt of the rents and profits of the settled property, and who must not then use or bear the specified surname and arms⁴. It then directs that any such person⁵ within a specified period after becoming so entitled⁶, unless he is a child, in which case the obligation is to be performed within the specified period after attaining his majority⁷, is to apply for and endeavour to obtain a licence from the Crown⁸ expressly authorising him to take and use⁹ the specified surname¹⁰ and the specified arms¹¹.

1 As to the changing of a name and the invalidity of a clause requiring a first name to be changed see PARA 748 post. As to conditions of defeasance generally see PARA 740 ante.

2 See eg *Re Neeld, Carpenter v Inigo-Jones* [1962] Ch 643, [1962] 2 All ER 335, CA.

3 As to the meaning of 'entitled' see PARAS 743 note 8, 744 note 2 ante.

4 A direction to use a particular surname on all occasions is not void for uncertainty: *Re Neeld, Carpenter v Inigo-Jones* [1962] Ch 643, [1962] 2 All ER 335, CA. See also *Re Howard's Will Trusts, Levin v Bradley* [1961] Ch 507, [1961] 2 All ER 413; *Blathwayt v Baron Cawley* [1976] AC 397, [1975] 3 All ER 625, HL. Cf *Re Murray, Martins Bank Ltd v Dill* [1955] Ch 69, [1954] 3 All ER 129, CA. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

5 If the person entitled is a woman, the obligation is sometimes imposed on her husband (*Re Williams* (1860) 6 Jur NS 1064), but an exception is sometimes made in favour of husbands who are peers or sons of peers (see *Egerton v Earl Brownlow* (1853) 4 HL Cas 1 at 7). A condition requiring a woman, whether married or not, to change her name, is not void as being contrary to public policy: *Re Neeld, Carpenter v Inigo-Jones* [1962] Ch 643, [1962] 2 All ER 335, CA.

6 If no period is specified it is a sufficient compliance with the clause if the change of name is effected within a reasonable time, considering the circumstances of the case (*Davies v Lowndes* (1835) 1 Bing NC 597 at 618), but in the absence of a time limit the clause may be void as transgressing the rule against perpetuities (see *Bennett v Bennett* (1864) 2 Drew & Sm 266; *Re Fry, Reynolds v Denne* [1945] Ch 348, [1945] 2 All ER 205). As to this rule see PARA 740 note 3 ante.

7 As to compliance with conditions by children see PARA 744 ante and note 8 infra.

8 If no method of assuming the name is specified, the voluntary assumption of it even by a child is sufficient (*Doe d Luscombe v Yates* (1822) 5 B & Ald 544; *Davies v Lowndes* (1835) 1 Bing NC 597; *Bevan v Mahon-Hagan* (1893) 31 LR Ir 342, CA; *Barlow v Bateman* (1730) 3 P Wms 64; on appeal (1735) 2 Bro Parl Cas 272, HL); but in *Re Talbot* [1932] IR 714, doubt was expressed whether it was possible for a child to accomplish the act of taking or assuming a surname by any voluntary act on his part. However, a beneficiary is not normally required to comply with a condition before he attains his majority: see PARA 744 ante. Where the condition was to 'take the name for themselves and their heirs', it was said that many acts are to be done to oblige the heirs to take it, such as a grant from the Sovereign or an Act of Parliament: *Gulliver d Corrie v Ashby* (1766) 4 Burr 1929 at 1940. As to the methods by which a new name can be assumed see PARA 748 post.

9 'Take and use' means 'take and thereafter use', so that discontinuance of the name involves forfeiture: *Re Drax, Baroness Dunsany v Sawbridge* (1906) 75 LJ Ch 317. See also *Blagrove v Bradshaw* (1858) 4 Drew 230. However, the mere inadvertent use of the former surname does not involve forfeiture: *Re Neeld, Carpenter v Inigo-Jones* [1962] Ch 643, [1962] 2 All ER 335, CA.

10 If the clause does not enjoin the assumption of the name as surname it is sufficient that the devisee has the name as a first name: *Bennett v Bennett* (1864) 2 Drew & Sm 266. If the devisee is required to assume the prescribed surname, the use of it before his own family name is not a compliance with the condition (*D'Eyncourt v Gregory* (1876) 1 ChD 441 at 445; *Re Llangattock, Shelley v Harding* (1917) 33 TLR 250; *Re Berens, Re Dowdeswell, Berens-Dowdeswell v Holland-Martin* [1926] Ch 596); but, if the prescribed surname is to be assumed 'along or together with' the devisee's family name, it may be used before the family name (*Re Eversley, Mildmay v Mildmay* [1900] 1 Ch 96).

11 As to the assumption of arms see PARA 749 post. A condition requiring a person to quarter the arms of another with his own requires him, if he has none, to obtain his own: *Re Neeld, Inigo-Jones v Inigo-Jones* [1969] 2 All ER 1025, [1969] 1 WLR 988.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iv) Conditions of Defeasance/746. Condition of defeasance for breach of name and arms clause.

746. Condition of defeasance for breach of name and arms clause.

A name and arms clause is generally followed by a condition of defeasance¹ of the interest of any person who fails to comply with its provisions² in favour of the next remainderman³. In the case of a defaulting tenant for life, the estate may be made to devolve on the remainderman, who may be his child⁴, but in the case of a defaulting tenant in tail the estate cannot be made to devolve upon the next remainderman in tail as though the person in default were dead, since to do so would be to allow an estate tail to be partially good and partially bad⁵.

A forfeiture clause, with no gift over, is effective to determine an estate tail⁶, but is repugnant to an absolute gift⁷. Accordingly the condition is defeated by the execution of a disentailing assurance⁸.

1 Where the words are capable of construction either as a condition subsequent or a condition precedent, the former will be preferred: *Bennett v Bennett* (1864) 2 Drew & Sm 266 at 275; *Re Greenwood, Goodhart v Woodhead* [1903] 1 Ch 749 at 755, CA; *Re Talbot* [1932] IR 714. As to conditions of defeasance generally see PARA 740 ante. As to name and arms clauses see PARA 745 ante.

2 As to what amounts to a breach see PARA 747 post. If there is any discrepancy between the requirements of the name and arms clause and the defeasance clause the resulting confusion may cause both clauses to be void for uncertainty: *Re Murray, Martins Bank Ltd v Dill* [1955] Ch 69, [1954] 3 All ER 129, CA. Cf *Re Neeld, Carpenter v Inigo-Jones* [1962] Ch 643, [1962] 2 All ER 335, CA, where missing words were able to be supplied.

3 In the absence of a gift over, the condition may be void for perpetuity (see *Re Fry, Reynolds v Denne* [1945] Ch 348, [1945] 2 All ER 205; *Re Engels, National Provincial Bank Ltd v Mayer* [1943] 1 All ER 506; and PARA 740 note 3 ante), and failure to invest a gift over may cause the name and arms clause to be construed as precatory only (*Gulliver d Corrie v Ashby* (1766) 4 Burr 1929 at 1940; *Vandeleur v Sloane* [1919] 1 IR 116; *Re Evans's Contract* [1920] 2 Ch 469; *Re Talbot* [1932] IR 714).

4 *Doe d Lumley v Earl of Scarborough* (1835) 3 Ad & El 2 at 39.

5 *Corbet's Case* (1600) 1 Co Rep 83b at 85b; *Mildmay's Case* (1605) 6 Co Rep 40a; *Seymour v Vernon* (1864) 10 Jur NS 487. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

6 *Astley v Earl of Essex* (1874) LR 18 Eq 290.

7 *Re Catt's Trusts* (1864) 2 Hem & M 46; *Musgrave v Brooke* (1884) 26 ChD 792; *Re Fry, Reynolds v Denne* [1945] Ch 348, [1945] 2 All ER 205. The absence of a gift over may cause the condition to be void for perpetuity, there being no vested remaindermen in such a case: *Re Fry, Reynolds v Denne* supra. Cf *Re Hanlon, Heads v Hanlon* [1933] Ch 254.

8 *Doe d Lumley v Earl of Scarborough* (1835) 3 Ad & El 2 (revised sub nom *Earl of Scarborough v Doe d Savile* (1836) 3 Ad & El 897, Ex Ch); *Milbank v Vane* [1893] 3 Ch 79, CA; *Re Hind, Bernstone v Montgomery* [1933] Ch 208. See also *Blathwayt v Baron Cawley* [1976] AC 397, [1975] 3 All ER 625, HL. As to the effect of a name and arms clause in referential trusts in tail of personality see *Re Cornwallis, Cornwallis v Wykeham-Martin* (1886) 32 ChD 388. As to referential trusts see PARA 721 ante. As to disentailing deeds see REAL PROPERTY vol 39(2) (Reissue) PARA 121 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iv) Conditions of Defeasance/747. What amounts to a breach.

747. What amounts to a breach.

Ignorance of a condition of defeasance is no excuse for failure to comply with it¹. What will amount to a breach of a condition will depend on the wording of the condition in the particular case. If a condition is expressed to take effect if the donee 'omits' or 'fails' to take the name and arms, this will cover every case of non-compliance². However, the word 'refuse' implies a conscious act of volition, so that a person who was ignorant of the condition or was under a disability cannot be said to have refused to comply with it³, but if a person knows of the existence of the condition, a refusal need not be express⁴. 'Neglect', when used alone, *prima facie* covers only omissions that are negligent⁵, but when used in certain contexts it may mean no more than 'fail'⁶. The expression 'neglect or refuse' also implies a conscious act of volition⁷.

1 *Lady Anne Fry's Case* (1674) 1 Vent 199; *Re Hodges' Legacy* (1873) LR 16 Eq 92; *Astley v Earl of Essex* (1874) LR 18 Eq 290. The case would be different if the party could make a good title apart from the instrument containing the condition and he was ignorant of the condition: *Doe d Kenrick v Lord Beauclerk* (1809) 11 East 657. As to conditions of defeasance generally see PARA 740 ante.

2 *Astley v Earl of Essex* (1874) LR 18 Eq 290; *Partridge v Partridge* [1894] 1 Ch 351; *Re Quintin Dick, Lord Cloncurry v Fenton* [1926] Ch 992. However, the mere inadvertent use of the former surname does not involve forfeiture: *Re Needl, Carpenter Inigo-Jones* [1962] Ch 643, [1962] 2 All ER 335, CA. As to name and arms clauses see PARAS 745-746 ante.

3 *Doe d Kenrick v Lord Beauclerk* (1809) 11 East 657 at 667; *Re Quintin Dick, Lord Cloncurry v Fenton* [1926] Ch 992.

4 *Doe d Duke of Norfolk v Hawke* (1802) 2 East 481 at 487.

5 *Re Conington's Will* (1860) 6 Jur NS 992; *Re Quintin Dick, Lord Cloncurry v Fenton* [1926] Ch 992.

6 *Hawkes v Baldwin* (1838) 9 Sim 355; *Re Hodges' Legacy* (1873) LR 16 Eq 92; *O'Higgins v Walsh* [1918] 1 IR 126; *Re Quintin Dick, Lord Cloncurry v Fenton* [1926] Ch 992.

7 *Partridge v Partridge* [1894] 1 Ch 351; *Re Edwards, Lloyd v Boyes* [1910] 1 Ch 541 at 550; *Re Quintin Dick, Lord Cloncurry v Fenton* [1926] Ch 992.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iv) Conditions of Defeasance/748. Change of name.

748. Change of name.

A surname may be changed by mere user, without formality, or by deed poll, but a first name may be changed only by private Act¹ or at confirmation². Recourse to Parliament for authority to adopt a new name is unusual, but it may be necessary to obtain a private Act, as for instance where the clause requires the adoption of that course, or requires a change of the first name³. Such an Act is not imperative in its terms, but merely permits the assumption of the new name⁴.

1 See eg the Baines Name Act 1907, a private Act under which the name of Henry Rodd was assumed in place of the original name Raymond Hill.

2 *Re Parrott, Cox v Parrott* [1946] Ch 183, [1946] 1 All ER 321. See also ECCLESIASTICAL LAW; PERSONAL PROPERTY vol 35 (Reissue) PARA 1273. A clause requiring the beneficiary to change his first name by deed poll is impossible to fulfil and so void: *Re Parrott, Cox v Parrott* supra. As to change of name see PERSONAL PROPERTY vol 35 (Reissue) PARA 1272 et seq.

3 As to the procedure on personal bills see PARLIAMENT vol 34 (Reissue) PARA 850 et seq. As to the voluntary assumption of a name where no method is specified see PARA 745 note 8 ante.

4 See PERSONAL PROPERTY vol 35 (Reissue) PARA 1277. As to changing the surname of a child when a residence order is in force see the Children Act 1989 s 13(1)(a); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 262.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(4) BENEFICIAL INTERESTS/(iv) Conditions of Defeasance/749. Assumption of arms.

749. Assumption of arms.

An obligation to assume arms is not satisfied by mere user unless the person assuming them is entitled by descent to bear them¹. Arms can lawfully be assumed² only by applying for a royal licence³.

1 *Re Berens, Re Dowdeswell, Berens-Dowdeswell v Holland-Martin* [1926] Ch 596, 605. See also *Austen v Collins* (1886) 54 LT 903; *Bevan v Mahon-Hagan* (1891) 27 LR Ir 399 (on appeal (1893) 31 LR Ir 342 at 366, Ir CA); *Re Croxon, Croxon v Ferrers* [1904] 1 Ch 252. The right to bear arms is a dignity conferred by the Crown, and not an incorporeal hereditament. It is not cognisable by the common law; jurisdiction in these matters is in the High Court of Chivalry of the Earl Marshal of England, which although still extant, will intervene only in cases of substance: *Manchester Corpn v Manchester Palace of Varieties Ltd* [1955] P 133, [1955] 1 All ER 387. See further PEERAGES AND DIGNITIES vol 79 (2008) PARAS 875-877.

2 A clause which requires the assumption of arms which the College of Arms will not grant, as being the arms of some other family, is void for impossibility: *Re Croxon, Croxon v Ferrers* [1904] 1 Ch 252; *Re Berens, Re Dowdeswell, Berens-Dowdeswell v Holland-Martin* [1926] Ch 596. See also *Austen v Collins* (1886) 54 LT 903. As to the College of Arms see PEERAGES AND DIGNITIES vol 79 (2008) PARA 881.

3 As to applications for a royal licence see PEERAGES AND DIGNITIES vol 79 (2008) PARA 875.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(5) SETTLED LAND ACT TRUSTEES/750. Trustees for the purposes of the Settled Land Act 1925.

(5) SETTLED LAND ACT TRUSTEES

750. Trustees for the purposes of the Settled Land Act 1925.

The following persons are trustees of a settlement¹ for the purposes of the Settled Land Act 1925²:

- 82 (1) the persons, if any, who are for the time being under the settlement³ trustees with power of sale of the settled land⁴ (subject or not to the consent of any person), or with power of consent to or approval of the exercise of such a power of sale, or, if there are no such persons⁵; then
- 83 (2) the persons, if any, for the time being, who are by the settlement declared to be trustees of it for the purposes of the Settled Land Acts 1882 to 1890⁶, or any of them, or the Settled Land Act 1925, or, if there are no such persons⁷; then
- 84 (3) the persons, if any, who are for the time being under the settlement trustees with a power or duty to sell any other land comprised⁸ in the settlement and subject to the same limitations as the land to be sold or otherwise dealt with, or with power of consent to or approval of the exercise of such a power of sale, or, if there are no such persons⁹; then
- 85 (4) the persons, if any, who are for the time being under the settlement trustees with a future power or duty to sell the settled land¹⁰, or with power of consent to or approval of the exercise of such a future power of sale, and whether the power or duty takes effect in all events or not, or, if there are no such persons¹¹; then
- 86 (5) the persons, if any, appointed by deed to be trustees of the settlement by all the persons who at the date of the deed were together able, by virtue of their beneficial interests or by the exercise of an equitable power, to dispose of the settled land in equity for the whole estate the subject of the settlement¹².

If, on 1 January 1926, any persons who had been appointed under the Settled Land Act 1882¹³ had power to act generally or for any specific purpose on behalf of a child¹⁴, those persons became trustees of the settlement¹⁵.

1 'Trustees of the settlement' means the trustees of the settlement for the purposes of the Settled Land Act 1925, however appointed or constituted: ss 30(1), 117(1)(xxiv).

2 See the Settled Land Act 1925 s 30(1).

3 For the meaning of 'settlement' see PARA 678 note 1 ante.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante. The power of sale must be general and not limited; that is it must be a power exercisable at any time and for any purpose: *Re Coull's Settled Estates*[1905] 1 Ch 712. See also *Re Morgan*(1883) 24 ChD 114. Where a power of sale given to trustees was exercisable only during the lifetime of the tenant for life, on her death they ceased to be trustees for the purposes of the former Acts: *Re Collis's Estate*[1911] 1 IR 267. If realty is settled by reference to the trusts of personality (see PARA 907 et seq post), a power to vary investments makes the trustees of the personality trustees with a power of sale of the settled realty (*Re Garnett Orme and Hargreaves' Contract*(1883) 25 ChD 595), and a power to vary or transfer securities has been held to imply a power to sell ground rents which were an investment authorised by the settlement (*Re Tapp and London and India Docks Co's Contract* (1905) 74 LJ Ch 523). Trustees of a term with power to raise money by mortgage or any other means do not have a power of sale of the settled land: *Re Carne's Settled Estates*[1899] 1 Ch 324. The Settled Land Act 1925 s 30(1)(i), (iii),

(iv) (s 30(1)(iii), (iv) as amended) takes effect as if the powers referred to there had not by that Act been made exercisable by the tenant for life or statutory owner: s 30(2). For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post. As to the statutory owner see PARA 766 post. By virtue of s 108, the trustees are not entitled to exercise the power of sale (see PARA 827 post) unless they are statutory owners and entitled to sell in that capacity (see PARA 766 post), but the effect of conferring the power of sale is to make the persons on whom it is conferred trustees.

5 Ibid s 30(1)(i).

6 As to these Acts see PARA 678 note 1 ante.

7 Settled Land Act 1925 s 30(1)(ii).

8 For the meaning of 'land' see PARA 680 note 1 ante. 'Comprised in' means 'at any time comprised in', and includes land not originally subject to the trusts of the settlement, but subsequently purchased by the trustees out of personality: see *Re Moore, Moore v Bigg*[1906] 1 Ch 789.

9 Settled Land Act 1925 s 30(1)(iii) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2).

10 It is immaterial that the power or trust is to take effect only after the death of one of the trustees (*Re Jackson's Settled Estate*[1902] 1 Ch 258), or that one or both of the trustees are themselves tenants for life (*Re Jackson's Settled Estate* supra; *Re Davies and Kent's Contract*[1910] 2 Ch 35, CA).

11 Settled Land Act 1925 s 30(1)(iv) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 2).

12 Settled Land Act 1925 s 30(1)(v).

13 See the Settled Land Act 1882 s 60 (repealed), now replaced by the Settled Land Act 1925 s 26 (see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 33).

14 See PARA 665 note 13 ante.

15 Settled Land Act 1925 s 37, Sch 2 para 3(3).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(5) SETTLED LAND ACT TRUSTEES/751. Personal representatives as trustees.

751. Personal representatives as trustees.

If a settlement¹ has been created by will², or a settlement has arisen by the effect of an intestacy, and apart from this provision there would be no trustees of that settlement for the purposes of the Settled Land Act 1925, then, until other trustees are appointed, the personal representatives³ of the deceased are by virtue of that Act the trustees of the settlement, but if there is a sole personal representative, not being a trust corporation⁴, it is obligatory on him to appoint an additional trustee to act with him for the purposes of the Settled Land Act 1925, and the provisions of the Trustee Act 1925⁵ relating to the appointment of new trustees and the vesting of trust property apply accordingly⁶.

1 For the meaning of 'settlement' see PARA 678 note 1 ante.

2 For the meaning of 'will' see PARA 695 note 3 ante.

3 For the meaning of 'personal representative' see PARA 697 note 6 ante.

4 For the meaning of 'trust corporation' see PARA 705 note 6 ante.

5 See generally TRUSTS.

6 Settled Land Act 1925 s 30(3). This provision applies even if the estate is fully administered (per Russell J in chambers (1926) 62 L Jo 436), but the words 'and the provisions accordingly' apply only to the case of a sole personal representative, and if two or more personal representatives wish to retire and appoint new trustees in their place they must do so under the powers conferred by the Trustee Act 1925 s 64(1) (see PARA 756 post; and TRUSTS vol 48 (2007 Reissue) PARA 835 et seq): *Re Dark, Glover v Dark* [1954] Ch 291, [1954] 1 All ER 681.

Where a testator devised land to trustees of a settlement to be held on the trusts of that settlement and at his death there were no trustees of a settlement, the testator's personal representatives were trustees of the settlement created by his will: *Re Shelton's Settled Estates* [1928] WN 27. As to the powers of personal representatives of a sole or last surviving trustee see PARA 753 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(5) SETTLED LAND ACT TRUSTEES/752. Continuance of trustees in office.

752. Continuance of trustees in office.

If any persons have been appointed or constituted trustees of a settlement¹, whether by court order² or otherwise, or have by reason of a power or duty to sell, or by reason of a power of consent to or approval of the exercise of a power of sale, or by virtue of the Settled Land Act 1925 or otherwise at any time become trustees of a settlement for the purposes of the Settled Land Acts 1882 to 1890³, or the Settled Land Act 1925, then those persons or their successors in office⁴ remain and are trustees of the settlement as long as that settlement is subsisting or deemed to be subsisting for the purposes of the Settled Land Act 1925⁵.

1 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante.

2 See PARA 792 post.

3 As to these Acts see PARA 678 note 1 ante.

4 'Successors in office' means the persons who, by appointment or otherwise, have become trustees for such purposes: Settled Land Act 1925 s 33(1). As to the powers of the personal representatives of a last surviving or continuing trustee see PARA 753 post.

5 Ibid s 33(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2). As to the duration of settlements see PARA 708 ante. Trustees for the purposes of the Settled Land Act 1925 are trustees of the settlement, not of the land subject to it, so that trustees appointed by the court in Ireland of a settlement which then comprised only land in Ireland did not cease to be trustees of the settlement by reason of the sale of all the land in Ireland: *Re Earl of Arran and Knowlesden and Creer's Contract* [1912] 2 Ch 141. As to a case where, before 1 January 1926, a settlement had ceased to subsist but was again brought into existence by the Settled Land Act 1925 on that date see PARA 754 note 4 post. As to the position when no relevant property remains subject to a settlement see PARA 676 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(5) SETTLED LAND ACT TRUSTEES/753. Powers of surviving or continuing trustees.

753. Powers of surviving or continuing trustees.

The provisions of the Settled Land Act 1925 referring to the trustees of a settlement¹ apply to the surviving or continuing trustees or trustee of the settlement² for the time being³, except that capital money arising under the Settled Land Act 1925⁴ must not be paid to a sole trustee unless the trustee is a trust corporation⁵. Subject to that exception, until the appointment of new trustees, the personal representatives or representative for the time being of a sole trustee, or, where there were two or more trustees, of the last surviving or continuing trustee, are or is capable of exercising or performing any power or trust which was given to, or capable of being exercised by, the sole or last surviving or continuing trustee, or the other trustees or trustee for the time being of the trust⁶.

1 See the Settled Land Act 1925 s 94(2). For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante.

2 For the meaning of 'settlement' see PARA 678 note 1 ante.

3 Settled Land Act 1925 s 94(2).

4 For the meaning of 'capital money arising under the Act' see PARA 795 post.

5 See the Settled Land Act 1925 s 94(1); and PARA 786 post. For the meaning of 'trust corporation' see PARA 705 note 6 ante.

6 See the Trustee Act 1925 s 18(2); and TRUSTS vol 48 (2007 Reissue) PARA 817. As to the power of the personal representatives of a last surviving or continuing trustee to give receipts see PARA 785 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(5) SETTLED LAND ACT TRUSTEES/754. Trustees of compound settlements.

754. Trustees of compound settlements.

Persons who are for the time being trustees for the purposes of the Settled Land Act 1925¹ of an instrument² which is a settlement³, or is deemed to be a subsisting settlement for those purposes⁴, are the trustees for the purposes of that Act of any settlement constituted by that instrument and any instruments subsequent in date or operation⁵. Further, if there are trustees for the purposes of that Act of the instrument under which there is a tenant for life⁶ or statutory owner⁷ but there are no trustees for those purposes of a prior instrument, being one of the instruments by which a compound settlement⁸ is constituted, those trustees, unless and until trustees are appointed⁹ of the prior instrument or of the compound settlement, are the trustees for those purposes of that Act of the compound settlement¹⁰.

These provisions apply whenever any of the instruments came into operation, but have effect without prejudice to any appointment made by the court before 1926 of trustees of a settlement constituted by more than one instrument, and to the power of the court in any case after 1925 to make any such appointment, and if any such appointment has been or is made, these provisions do not apply or will cease to apply to the settlement consisting of the instruments to which the appointment relates¹¹.

1 See PARAS 750-752 ante.

2 For the meaning of 'instrument' see PARA 688 note 7 ante.

3 For the meaning of 'settlement' see PARA 678 note 1 ante.

4 See PARA 679 ante. As to the duration of settlements see PARA 708 ante. Where, before 1 January 1926, a compound settlement had ceased to subsist but was again brought into existence by the Settled Land Act 1925 on that date, the trustees of the compound settlement who had been appointed before it ceased to subsist were held to be the trustees of that settlement for the purposes of that Act: *Re Lord Alington and London County Council's Contract* [1927] 2 Ch 253.

5 Settled Land Act 1925 s 31(1); *Re Cayley and Evans' Contract* [1930] 2 Ch 143.

6 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post.

7 As to statutory owners see PARA 766 post.

8 As to compound settlements see PARA 681 et seq ante.

9 Such an appointment can be made either by the court or out of court under the statutory or an express power: see PARA 756 et seq post.

10 Settled Land Act 1925 s 31(1) (amended by the Law of Property (Amendment) Act 1926 s 7, Schedule).

11 Settled Land Act 1925 s 31(2). As to the appointment of trustees by the court see PARAS 756-757 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(5) SETTLED LAND ACT TRUSTEES/755. Trustees of settlements by reference.

755. Trustees of settlements by reference.

If a settlement¹, whenever made², takes effect by reference to another settlement³, the trustees for the time being of the settlement to which reference is made are the trustees of the settlement⁴ by reference, unless the settlement by reference contains an appointment of trustees of the settlement for the purposes of the Settled Land Acts 1882 to 1890⁵, or any of them, or the Settled Land Act 1925⁶. However, this provision has effect without prejudice to any appointment made by the court before 1926 of trustees of a settlement by reference, or of the compound settlement consisting of a settlement and any other settlement or settlements made by reference to them⁷, and to the power of the court, in any case after 1925, to make any such appointment, and, if any such appointment has been or is made, this provision does not apply or will cease to apply⁸.

1 For the meaning of 'settlement' see PARA 678 note 1 ante.

2 See the Settled Land Act 1925 s 32(2).

3 'A settlement by reference to another settlement' means a settlement of property upon the limitations and subject to the powers and provisions of an existing settlement, with or without variation: *ibid* s 32(3).

4 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante.

5 As to these Acts see PARA 678 note 1 ante.

6 Settled Land Act 1925 s 32(1). As to the trustees of an aggregate estate see PARA 687 ante.

7 As to compound settlements see PARA 681 et seq ante. As to the difference between a compound settlement and a settlement by reference to the trusts of another settlement see PARA 681 note 3 ante.

8 Settled Land Act 1925 s 32(2).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(5) SETTLED LAND ACT TRUSTEES/756. Appointment of trustees.

756. Appointment of trustees.

It is unusual to insert in a settlement express powers of appointing new trustees, and, as a rule, the only clause inserted in a settlement is the nomination of the persons or person, commonly the settlor or, in the case of a marriage settlement, the husband and wife and the survivor of them, who may exercise the statutory power of appointment¹.

There should be inserted in the trust instrument a declaration that the trustees of the settlement are trustees of the settlement for the purposes of the Settled Land Act 1925². The statutory powers and provisions with reference to the appointment of new trustees for such purposes and the discharge and retirement of such trustees are applicable³. If at any time there are no trustees of a settlement⁴, or if in any other case it is expedient for the purposes of the Settled Land Act 1925, that new trustees of a settlement should be appointed, the court⁵ may⁶, if it thinks fit, on the application of the tenant for life, statutory owner⁷ or of any other person having under the settlement⁸ an estate or interest in the settled land⁹ in possession, remainder or otherwise, or, in the case of a child¹⁰, of his testamentary or other guardian or next friend, appoint fit persons to be trustees of the settlement¹¹. The persons so appointed, and the survivors and survivor of them, while continuing to be trustees or trustee, and, until the appointment of new trustees, the personal representatives or representative¹² for the time being of the last surviving or continuing trustee, become and are the trustees or trustee of the settlement¹³.

If at any time trustees of a settlement have been appointed by the court for the purposes of the Settled Land Acts 1882 to 1890, or of the Settled Land Act 1925, then after 1925 the person or persons nominated for the purpose of appointing new trustees by the instrument, if any, creating the settlement, even though no trustees for the purposes of those Acts were thereby appointed, or, if there is no such person, or no such person able and willing to act, the surviving or continuing trustees or trustee for the time being for the purposes of those Acts, or the personal representatives of the last surviving or continuing trustee for those purposes, has or have the statutory powers to appoint new or additional trustees of the settlement for those purposes¹⁴.

1 See the Trustee Act 1925 s 36 (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 835 et seq. As to marriage settlements see PARA 628 et seq ante.

2 As to trust instruments see PARA 694 ante. The vesting deed states the names of the trustees: see PARA 690 ante. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

3 See the Trustee Act 1925 s 64(1); and TRUSTS vol 48 (2007 Reissue) PARA 835 et seq. Two or more personal representatives who are trustees of the settlement by virtue of the Settled Land Act 1925 s 30(3) (see PARA 751 ante), can retire and appoint new trustees in their places: *Re Dark, Glover v Dark* [1954] Ch 291, [1954] 1 All ER 681. In the case of settlements for the purposes of the Settled Land Act 1925, or of dispositions on trust for sale subsisting on 1 January 1926, no new trustees may be appointed if the effect of the appointment would be to cause the number of the trustees to exceed four: see the Trustee Act 1925 s 34(1); and PARA 900 post. Where such settlements or dispositions are made or come into operation after 1925, the number of the trustees must not exceed four: see s 34(2) (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 804 et seq.

4 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante.

5 As to the court see PARA 792 post.

6 The power is discretionary: see *Williams v Jenkins* [1894] WN 176. In *Burke v Gore* (1884) 13 LR Ir 367 it was stated that the court should not only require to be satisfied of the fitness of the proposed trustees, but also that the purpose for which their appointment is applied for is such as to render their appointment safe and beneficial to all parties interested, but this has not been followed in practice, at any rate in England.

7 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post. As to statutory owners see PARA 766 post.

8 For the meaning of 'settlement' see PARA 678 note 1 ante.

9 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

10 See PARA 665 note 13 ante.

11 Settled Land Act 1925 s 34(1). As to the procedure see PARA 792 post. The court has power under the Judicial Trustees Act 1896 s 1 (as amended) (see TRUSTS vol 48 (2007 Reissue) PARA 757 et seq) to appoint a judicial trustee sole trustee for the purposes of the Settled Land Act 1925: *Re Marshall's Will Trusts* [1945] Ch 217, [1945] 1 All ER 550. An order appointing two persons trustees for the purposes of the Settled Land Acts 1882 to 1890 (see PARA 678 note 1 ante) of a settlement created by a will was held to have the effect of appointing the persons named separate trustees of three several settlements created by the will: *Re Skerritt's Estate* [1899] WN 240. However, if an instrument creates more than one settlement, persons appointed to be trustees of one of those settlements will not thereby become trustees of any of the other settlements: *Re Ogle's Settled Estates* [1927] 1 Ch 229. As to the persons whom the court will appoint see PARA 757 post.

12 For the meaning of 'personal representative' see PARA 697 note 6 ante.

13 Settled Land Act 1925 s 34(2). Until the appointment of new trustees the personal representatives of a sole or a last surviving or continuing trustee can exercise and perform all powers and trusts: see the Trustee Act 1925 s 18(2); and TRUSTS vol 48 (2007 Reissue) PARA 817.

14 Ibid s 64(2).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(5) SETTLED LAND ACT TRUSTEES/757. Qualification of persons appointed by the court.

757. Qualification of persons appointed by the court.

Since the appointment of trustees is required to impose a check upon the extensive powers given by the Settled Land Act 1925 to a tenant for life¹, the court has declined to appoint the tenant for life² or his solicitor³, and has even refused to appoint two persons who were near relatives to one another⁴; but these cases are not now treated as laying down a general principle. There is no rule of practice that the subsisting trustees of a settlement ought to be appointed trustees for the purposes of the Settled Land Act 1925, and the tenant for life may propose other persons if he sees fit⁵, but the existing trustees, if willing and fit to act, are, as a general rule, appointed⁶. In a proper case persons resident abroad have been appointed, but this will only be done in exceptional circumstances⁷.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq post. As to the statutory powers see PARA 775 et seq post.

2 *Re Harrop's Trusts* (1883) 24 ChD 717. However, if a tenant for life has been appointed as a trustee the appointment is not invalid: *Re Davies and Kent's Contract* [1910] 2 Ch 35, CA.

3 *Re Kemp's Settled Estates* (1883) 24 ChD 485, CA; *Re Earl of Stamford, Payne v Stamford* [1896] 1 Ch 288; *Re Spencer's Settled Estates* [1903] 1 Ch 75. The appointment by the donee of a power of appointment of his own solicitor as a trustee is not, however, invalid: *Re Earl of Stamford, Payne v Stamford* supra; *Re Cotter, Jennings v Nye* [1915] 1 Ch 307.

4 *Re Knowles' Settled Estates* (1884) 27 ChD 707. Cf *Re Norris, Allen v Norris* (1884) 27 ChD 333. See also TRUSTS vol 48 (2007 Reissue) PARAS 860-864.

5 *Re Nicholas* [1894] WN 165.

6 *Re Stoneley's Will* (1883) 27 Sol Jo 554.

7 *Re Simpson, Re Whitchurch* [1897] 1 Ch 256, CA. See also *Re Maberley's Settled Estate* (1887) 19 LR Ir 341; *Re Whitehead's Will Trusts, Burke v Burke* [1971] 2 All ER 1334, [1971] 1 WLR 833.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(5) SETTLED LAND ACT TRUSTEES/758. Trustees for management of child's estate.

758. Trustees for management of child's estate.

Trustees may be appointed for the management of an estate during the minority of a beneficiary, or where a beneficiary is contingently entitled to land¹.

1 As to the persons who are such trustees, and as to their powers see PARAS 665-666 ante. As to the age of majority see PARA 605 note 1 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(5) SETTLED LAND ACT TRUSTEES/759. Deed of declaration on appointment or discharge of trustees.

759. Deed of declaration on appointment or discharge of trustees.

Whenever a new trustee for the purposes of the Settled Land Act 1925 is appointed of a trust instrument¹, or a trustee of a trust instrument for those purposes is discharged from the trust without a new trustee being appointed, a deed must be executed, supplemental to the last or only principal vesting instrument², containing a declaration that the persons named in it, being the persons who after such appointment or discharge, as the case may be, are the trustees of the trust instrument for those purposes, are the trustees of the settlement for those purposes³. A memorandum of the names and addresses of the persons who are for the time being such trustees must be indorsed on or annexed to the last or only principal vesting instrument by or on behalf of the trustees of the settlement, and that vesting instrument must, for that purpose, be produced by the person having possession of it to the trustees of the settlement when so required⁴.

If the trustee is appointed or discharged by the court, the deed must be executed by such person as the court may direct, and in any other case it must be executed by⁵: (1) the person, if any, named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement, or, if no person is so named or the person is dead or unable or unwilling to act, the persons who if the principal vesting instrument had been the only instrument constituting the settlement would have had power to appoint new trustees⁶; (2) the persons named in the deed of declaration as the trustees of the settlement⁷; and (3) any trustee who is so discharged or retires⁸.

A statement contained in any such deed of declaration to the effect that the person named in the principal vesting instrument as the person for the time being entitled to appoint new trustees of the settlement is unable or unwilling to act, or that a trustee has remained outside the United Kingdom⁹ for more than 12 months, or refuses or is unfit to act, or is incapable of acting, is, in favour of a purchaser¹⁰ of a legal estate¹¹, conclusive evidence of the matter stated¹².

- 1 For the meaning of 'trust instrument' see PARA 688 note 7 ante.
- 2 For the meaning of 'principal vesting instrument' see PARA 698 note 1 ante.
- 3 Settled Land Act 1925 s 35(1). As to the trustees of the settlement see PARA 750 et seq ante.
- 4 Ibid s 35(1); Trustee Act 1925 s 35(2).
- 5 Settled Land Act 1925 s 35(2).
- 6 Ibid s 35(2)(i). For the meaning of 'settlement' see PARA 678 note 1 ante.
- 7 Ibid s 35(2)(ii).
- 8 Ibid s 35(2)(iii).
- 9 For the meaning of 'United Kingdom' see PARA 699 note 5 ante.
- 10 For the meaning of 'purchaser' see PARA 702 note 12 ante.
- 11 For the meaning of 'legal estate' see PARA 678 note 13 ante.
- 12 Settled Land Act 1925 s 35(3).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(5) SETTLED LAND ACT TRUSTEES/760. Nomination of trust corporation to receive notices.

760. Nomination of trust corporation to receive notices.

A settlement may nominate a trust corporation¹ to which notices of dealings affecting real or personal property² may be given, and in default of such nomination the trustees, if any, of the settlement, or the court³, on the application of any person interested, may make the nomination⁴.

1 For the meaning of 'trust corporation' see PARA 705 note 6 ante.

2 'Property' includes any thing in action, and any interest in real or personal property: Law of Property Act 1925 s 205(1)(xx).

3 As to applications to the court see PARA 905 post.

4 See the Law of Property Act 1925 s 138(1); and TRUSTS vol 48 (2007 Reissue) PARA 803.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(6) THE ESTATE OWNER/(i) Tenant for Life or Statutory Owner/761. Nature of tenant for life.

(6) THE ESTATE OWNER

(i) Tenant for Life or Statutory Owner

761. Nature of tenant for life.

The person of full age¹ who is for the time being beneficially entitled under a settlement² to possession³ of settled land⁴ for his life is, for the purposes of the Settled Land Act 1925, the tenant for life⁵ of that land and the tenant for life under that settlement⁶. There is only one tenant for life for the purposes of that Act, but that tenant for life may be constituted by two or more persons of full age so entitled as joint tenants⁷. If in any case there are two or more persons so entitled as joint tenants and they are not all of full age, such one or more of them as is or are for the time being of full age is or, if more than one, together constitute the tenant for life, but the beneficial interests of such of them as are not for the time being of full age are not affected⁸. However, a tenant for life under the Settled Land Act 1925 must be both beneficially entitled to possession and entitled for his life, so that such a tenant for life is not constituted by the several objects of a discretionary trust for distribution of the rents and profits during the life of one of them⁹.

If there is a tenant for life within the above meaning, he is deemed to be such notwithstanding that, under the settlement or otherwise, the settled land, or his estate or interest in it, is incumbered or charged in any manner or to any extent, and notwithstanding any assignment by operation of law or otherwise of his estate or interest under the settlement, whether before or after it came into possession, other than an assurance which extinguishes that estate or interest¹⁰.

1 The words 'of full age' mean not being a minor and so a corporation may be a tenant for life: *Re Earl of Carnarvon's Chesterfield Settled Estates, Re Earl of Carnarvon's Highclere Settled Estates*[1927] 1 Ch 138. As to the age of majority see PARA 605 note 1 ante. As to the application of the powers conferred by the Settled Land Act 1925 to children see s 26; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 56. As to the application of the provisions of the Settled Land Act 1925 to married women see s 25 (amended by the Married Women (Restraint upon Anticipation) Act 1949 s 1(4), Sch 2).

2 For the meaning of 'settlement' see PARA 678 note 1 ante.

3 'Possession' includes receipt of rents and profits, or the right to receive them, if any: Settled Land Act 1925 s 117(1)(xix).

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

5 For the meaning of 'tenant for life' see PARA 671 note 5 ante.

6 Settled Land Act 1925 s 19(1). A person who is entitled to reside in a house for life is a tenant for life within this provision, even if extensive powers of management are given to trustees (see *Re Baroness Llanover's Will, Herbert v Freshfield*[1902] 2 Ch 679; affd [1903] 2 Ch 16, CA), or even if an option must first be exercised (see *Re Anderson, Halligey v Kirkley*[1920] 1 Ch 175; *Re Gibbons, Gibbons v Gibbons*[1920] 1 Ch 372, CA). See also *Re Hanson, Hanson v Eastwood*[1928] Ch 96; *Binions v Evans*[1972] Ch 359, [1972] 2 All ER 70, CA. As to whether a person entitled to reside in a house is tenant for life where the settlement is expressed to create a trust for sale see PARA 678 note 29 ante. When dower has been assigned by metes and bounds, the dowress is a tenant for life under a settlement deemed to have been made by her husband: see PARA 679 ante. The words 'for life' mean for life and not for a greater interest: *Re Earl of Carnarvon's Chesterfield Settled Estates, Re Earl of Carnarvon's Highclere Settled Estates*[1927] 1 Ch 138. An annuitant is not a tenant for life: *Re Bird, Watson v*

Nunes[1927] 1 Ch 210. An exclusive right to occupy property for life does not necessarily constitute a life interest in that property under the Settled Land Act 1925: *Dent v Dent*[1996] 1 All ER 659, [1996] 1 WLR 683.

7 Settled Land Act 1925 s 19(2). Persons entitled to land in undivided shares do not constitute the tenant for life: *Re Stamford and Earl of Warrington, Payne v Grey*[1927] 2 Ch 217; but see *Re Stevens and Dunsby's Contract*[1928] WN 187. Where, immediately before 1926, there were two or more tenants for life of full age entitled under the same settlement in undivided shares, and after the cesser of all their interests in the income of the settled land, the entirety of the land was limited so as to devolve together (not in undivided shares), their interests were, but without prejudice to any beneficial interest, converted into a joint tenancy, and the joint tenants and the survivor of them, until such cesser occurs, constitute the tenant for life for the purposes of the Settled Land Act 1925 and the Law of Property Act 1925: s 39, Sch 1 Pt IV para 4 (added by the Law of Property (Amendment) Act 1926 s 7, Schedule). In ascertaining whether this last-mentioned provision applies, regard must be had to the limitations of the settlement subsisting immediately before 1926, but not to any dealing with or devolution of the interest of any person taking under the limitations of the settlement; it only applies where the interests of the tenants for life are followed by a vested indefeasible limitation not in undivided shares: *Re Colyer's Farningham Estate*[1927] 1 Ch 677. It does not apply where after the cesser of the interests of the life tenants the limitation is to trustees on trust for sale (*Re Higgs' and May's Contract*[1927] 2 Ch 249; *Re Robins, Holland v Gillam*[1928] Ch 721), or to one of the tenants for life (*Re Barrat, Body v Barrat*[1929] 1 Ch 336). As to where two persons constituting the tenant for life cannot agree whether the settled land should be sold see PARA 793 text and note 12 post. As to joint tenancy generally see REAL PROPERTY vol 39(2) (Reissue) PARA 190 et seq.

8 Settled Land Act 1925 s 19(3). As to the position when the sole tenant for life is a child see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 56.

9 See *Re Atkinson, Atkinson v Bruce*(1886) 31 ChD 577, CA.

10 Settled Land Act 1925 s 19(4). As to the effect on the exercise of the statutory powers of an assignment or surrender by a tenant for life of his estate or interest see PARAS 777-782 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(6) THE ESTATE OWNER/(i) Tenant for Life or Statutory Owner/762. Persons having the powers of tenant for life.

762. Persons having the powers of tenant for life.

Certain persons who are not tenants for life within the statutory meaning¹ but have the specified beneficial² estates or interests in possession, as distinguished from reversion or remainder³, can exercise the statutory powers, and the statutory provisions referring to a tenant for life⁴, either as conferring powers on him or otherwise, extend to each of them, any reference to the death of a tenant for life being deemed to refer to the determination by death or otherwise of the estate or interest of such person⁵. If the reversion, right of reverter or other reversionary right is in the Crown, the exercise by such a person of his powers under the Settled Land Act 1925 binds the Crown⁶.

Each of the following persons being of full age, when his estate or interest is in possession has the powers of a tenant for life⁷:

- 87 (1) a tenant in tail⁸, including a tenant in tail after possibility of issue extinct⁹, and a tenant in tail restrained by Act of Parliament¹⁰ from barring or defeating his estate tail, and even though the reversion is in the Crown, unless the land in respect of which such restraint is imposed was purchased with money provided by Parliament in consideration of public services¹¹;
- 88 (2) a person entitled to land for an estate in fee simple or for a term of years absolute¹² with or subject to, in any of such cases, an executory limitation¹³, gift or disposition over on failure of his issue or in any other event¹⁴;
- 89 (3) a person entitled to a base or determinable fee, even though the reversion or right of reverter is in the Crown, or to any corresponding interest in leasehold land¹⁵;
- 90 (4) a tenant for years determinable on life, not holding merely under a lease at a rent¹⁶;
- 91 (5) a tenant for the life of another, not holding merely under a lease at a rent¹⁷;
- 92 (6) a tenant for his own or any other life¹⁸, or for years determinable on life¹⁹, whose estate is liable to cease in any event during that life, whether by expiration of the estate or by conditional limitation or otherwise, or to be defeated by an executory limitation, gift or disposition over, or is subject to a trust for accumulation of income²⁰ for any purpose²¹;
- 93 (7) a tenant by the curtesy²²;
- 94 (8) a person entitled to the income of land under a trust²³ or direction for payment of the income to him during his own or any other life²⁴, whether or not subject to expenses of management²⁵ or to a trust for accumulation of income for any purpose, or until sale of the land, or until forfeiture, cesser or determination by any means of his interest in it²⁶, unless the land is subject to a trust of land²⁷; and
- 95 (9) a person beneficially entitled to land for an estate in fee simple or for a term of years absolute subject to any estates, interests, charges or powers of charging subsisting or capable of being exercised under a settlement²⁸.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante.

2 See *Re Jemmett and Guest's Contract* [1907] 1 Ch 629 (trustees holding on discretionary trusts cannot exercise the statutory powers). Personal representatives may be entitled to exercise the powers of a tenant for life: *Re Johnson, Johnson v Johnson* [1914] 2 Ch 134. It is apprehended that these powers only last so long as the specified estate lasts, eg those vested in a tenant in tail or in a tenant in fee with an executory limitation

over are extinguished if such person becomes absolute owner in fee. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

3 *Re Morgan* (1883) 24 ChD 114; *Re Strangways, Hickley v Strangways* (1886) 34 ChD 423, CA; *Re Baroness Llanover, Herbert v Ram* [1907] 1 Ch 635; *Re Bird, Watson v Nunes* [1927] 1 Ch 210. However, a term of years whatever its length, if it is merely a security for charges, does not prevent the person entitled to the income subject to the term from being in possession within the meaning of this provision: see *Re Jones* (1884) 26 ChD 736, CA; *Re Clitheroe Estate* (1885) 31 ChD 135, CA. Cf *Re Richardson, Richardson v Richardson* [1900] 2 Ch 778; *Re Money Kyrle's Settlement, Money Kyrle v Money Kyrle* [1900] 2 Ch 839.

4 See PARA 761 ante.

5 Settled Land Act 1925 s 20(2).

6 Ibid s 20(4).

7 Ibid s 20(1). As to the meaning of 'of full age' see PARA 761 note 1 ante; and as to the age of majority see PARA 605 note 1 ante.

8 'Tenant in tail' includes a person entitled to an entailed interest in property: *ibid* s 117(xxviii). For the meaning of 'entailed interest' see PARA 678 note 11 ante.

9 See REAL PROPERTY vol 39(2) (Reissue) PARA 148.

10 See REAL PROPERTY vol 39(2) (Reissue) PARA 133.

11 Settled Land Act 1925 s 20(1)(i). See also REAL PROPERTY vol 39(2) (Reissue) PARA 133. As to property owned by the Crown see generally CROWN PROPERTY.

12 For the meaning of 'term of years absolute' see PARA 678 note 13 ante.

13 For the meaning of 'limitation' see PARA 708 note 4 ante.

14 Settled Land Act 1925 s 20(1)(ii). See also REAL PROPERTY vol 39(2) (Reissue) PARA 45. This includes the case of a person to whom land is devised on condition of residence in a house and maintenance of a home there for a named person suffering from mental disorder: see *Re Richardson, Richardson v Richardson* [1904] 2 Ch 777.

15 Settled Land Act 1925 s 20(1)(iii). As to base fees see REAL PROPERTY vol 39(2) (Reissue) PARAS 134-139. For the meaning of 'determinable fee' see PARA 678 note 15 ante.

16 Ibid s 20(1)(iv). A person entitled to receive, if he so long lives, the rents payable by a tenant for years under an ordinary lease at a rent during the continuance of that tenant's term is not a tenant for years determinable on life within s 20(1)(iv), or under s 20(1)(vi) (see head (6) in the text): see *Re Hazle's Settled Estates* (1885) 29 ChD 78, CA. See also notes 17-19 infra. It is a necessary implication from this provision that a tenant of settled land under a lease at a rent is excluded from the class of persons who have the powers of a tenant for life: *Re Catling, Public Trustee v Catling* [1931] 2 Ch 359.

17 Settled Land Act 1925 s 20(1)(v). See also REAL PROPERTY vol 39(2) (Reissue) PARA 151 et seq. A person entitled for the life of another to receive the rents and profits of real estate whose interest has arisen in consequence of a direction for accumulation having become void under the Accumulations Act 1800 (repealed), or the replacing Law of Property Act 1925 s 164, and the Perpetuities and Accumulations Act 1964 s 13 (see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1121), is within this provision: see *Vine v Raleigh* [1896] 1 Ch 37, which, however, in so far as it decided that persons entitled in undivided shares had collectively the powers of a tenant for life, is no longer law. The assignee of the interest of a tenant for life under a settlement does not come within this provision: *Re Earl of Carnarvon's Chesterfield Settled Estates, Re Earl of Carnarvon's Highclere Settled Estates* [1927] 1 Ch 138.

18 A person entitled during his own or another's life to receive surplus rents from trustees who are in possession of the estates is not within this provision (see *Re Jones* (1884) 26 ChD 736, CA; *Re Baroness Llanover, Herbert v Ram* [1907] 1 Ch 635), but a residuary legatee entitled to put an end to accumulation of rents directed to be made during the life of another person comes within it (see *Re Drinkwater's Settled Estates* (1905) 49 Sol Jo 237). A person entitled to occupy a house during pleasure has during such occupation the powers of a tenant for life under this provision (see *Re Paget's Settled Estates* (1885) 30 ChD 161; *Re Eastman's Settled Estates* [1898] WN 170; *Re Carne's Settled Estates* [1899] 1 Ch 324; *Re Baroness Llanover's Will, Herbert v Freshfield* [1902] 2 Ch 679 (affd [1903] 2 Ch 16, CA); *Re Boyer's Settled Estates* [1916] 2 Ch 404; *Re Acklam, Oakeshott v Hawkins* [1929] 1 Ch 195; *Re Patten, Westminster Bank Ltd v Carlyon* [1929] 2 Ch 276; and see *Binions v Evans* [1972] Ch 359, [1972] 2 All ER 70, CA), unless he has precluded himself for the time

being from occupying personally, eg by concurring in a lease of the house (see *Re Edwards' Settlement* [1897] 2 Ch 412). However, there must be a direction to permit a specified person to reside in a specified house: see *Re Bond's Estate, Burrell v Bond* (1904) 48 Sol Jo 192. As to the position where the settlement confers a right of occupation but is expressed to create a trust for sale see PARA 678 note 29 ante. This provision also includes the case of a widow to whom land was devised during widowhood for the maintenance of herself and her children (see *Re Pollock, Pollock v Pollock* [1906] 1 Ch 146; *Re Martin* [1919] 1 IR 71), and of a person whose estate was suspended in the event, which happened, of a claim being enforced against the testator's estate (see *Williams v Jenkins* [1893] 1 Ch 700).

19 It should be noted that the words 'not holding merely under a lease at a rent' are not inserted here, but a tenant under a lease at a rent does not come within this provision: *Re Catling, Public Trustee v Catling* [1931] 2 Ch 359.

20 'Income' includes rents and profits: Settled Land Act 1925 s 117(1)(xix).

21 *Ibid* s 20(1)(vi). This includes a widow entitled to reside in the property until remarriage or until her son attains a stated age: *Re Hanson, Hanson v Eastwood* [1928] Ch 96. See also PARA 678 note 29 ante. Where property is given to a person for life subject to a trust for accumulation, this provision applies: see *Re Woodhouse, Annesley v Woodhouse* [1898] 1 IR 69; *Re Martyn, Coode v Martyn* (1900) 69 LJ Ch 733; *Re Llewellyn, Llewellyn v Llewellyn* [1911] 1 Ch 451; *Re Musgrave, Machell v Parry* [1916] 2 Ch 417. However, if the interest of the tenant for life does not arise until after the trust for accumulation has ceased, he does not come within this provision: see *Re Strangways, Hickley v Strangways* (1886) 34 ChD 423, CA. See, however, *Re Beauchamp's Will Trusts, Cadge v Barker-Hahlo* [1914] 1 Ch 676. As to trusts for accumulation see TRUSTS vol 48 (2007 Reissue) PARA 685.

22 Settled Land Act 1925 s 20(1)(vii). As to tenancy by the courtesy see PARA 679 note 11 ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 157-160. The estate or interest of a tenant by the courtesy is deemed to be an estate or interest arising under a settlement made by his wife: see s 20(3).

23 For the meaning of 'trust' see PARA 678 note 9 ante.

24 To come within this provision a person must be entitled for his own or some other life: see *Re Astor, Astor v Astor* [1922] 1 Ch 364 at 391, CA. A person entitled to a terminable life interest comes within the provision: see *Re Sumner's Settled Estates* [1911] 1 Ch 315. So also does a person entitled to rents for a term of years if he should so long live: *Re Waleran Settled Estates* [1927] 1 Ch 522. A person does not come within this provision if he is entitled only to a share of the income, the remainder being held as capital money (*Re Frewen* [1926] Ch 580), neither do the objects of a discretionary trust (see *Re Atkinson, Atkinson v Bruce* (1886) 31 ChD 577, CA; *Re Horne's Settled Estate* (1888) 39 ChD 84, CA), nor does a person who is entitled to a mere expectancy such as a right to surplus income, if any, subject to a discretionary trust in favour of another person (*Re Alston-Roberts-West's Settled Estate* [1928] WN 41; cf *Re Gallenga Will Trusts, Wood v Gallenga* [1938] 1 All ER 106), nor does a person absolutely entitled subject to annuities (*Re Sharpe's Deed of Release, Sharpe and Fox v Gullick* [1939] Ch 51, [1938] 3 All ER 449). In *Re Stevens and Dunsby's Contract* [1928] WN 187, it was held that persons entitled under the same will to rents in undivided shares were within this provision, distinguishing *Re Earl of Stamford and Warrington, Payne v Grey* [1927] 2 Ch 217, where persons entitled in undivided shares under separate settlements were held not to come within it.

25 The fact that the trustees are directed to manage the property does not prevent the person entitled to the rents from coming within this provision: see *Clarke v Thornton* (1887) 35 ChD 307.

26 See *Re Sumner's Settled Estates* [1911] 1 Ch 315. See also note 27 infra.

27 Settled Land Act 1925 s 20(1)(viii) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2). For the meaning of 'trust of land' see PARA 676 note 5 ante; definition applied by the Interpretation Act 1978 s 5, Sch 1. The fact that the whole income is exhausted by charges does not prevent the person who would be entitled to it, if there were any, from having the powers of a tenant for life under this provision: see *Re Jones* (1884) 26 ChD 736, CA; *Re Cookes' Settled Estates, Cookes v Cookes* [1885] WN 177. A person entitled in remainder after a valid trust for accumulation has not the powers of a tenant for life, his estate not being in possession: see *Re Strangways, Hickley v Strangways* (1886) 34 ChD 423, CA. It is otherwise if the term is in the nature of an incumbrance which may be redeemed at any moment: see *Re Clitheroe Estate* (1885) 31 ChD 135, CA.

28 Settled Land Act 1925 s 20(1)(ix). A purchaser of a fee simple subject to a family charge comes within this provision (*Re Earl of Carnarvon's Chesterfield Settled Estates, Re Earl of Carnarvon's Highclere Settled Estates* [1927] 1 Ch 138), and, if part of the land subject to a charge is sold, the rest being retained by the vendor, the purchaser and the vendor both come within this provision in respect of the land held by them (*Re Ogle's Settled Estates* [1927] 1 Ch 229).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(6) THE ESTATE OWNER/(i) Tenant for Life or Statutory Owner/763. Tenant for life suffering from mental disorder.

763. Tenant for life suffering from mental disorder.

Where the nominated judge or master of the Court of Protection¹ is satisfied that a tenant for life is incapable, by reason of mental disorder², of managing and administering his property and affairs, the judge or master may: (1) make such orders or give such directions or authorities as he thinks fit for the exercise of any power vested in the tenant for life³; and (2) appoint a receiver for the tenant for life in relation to his property and affairs⁴.

1 As to the exercise of powers by the nominated judge or master see the Mental Health Act 1983 ss 93, 94 (as amended); and MENTAL HEALTH vol 30(2) (Reissue) PARA 674 et seq.

2 For the meaning of 'mental disorder' see ibid s 1(2); and MENTAL HEALTH vol 30(2) (Reissue) PARA 402.

3 See ibid s 96(1)(k); and MENTAL HEALTH vol 30(2) (Reissue) PARA 683.

4 See ibid s 99(1); and MENTAL HEALTH vol 30(2) (Reissue) PARA 704.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(6) THE ESTATE OWNER/(i) Tenant for Life or Statutory Owner/764. Effect of restoring original life estate.

764. Effect of restoring original life estate.

Where by a disentailing assurance¹ settled land² is expressed to be limited (whether subject or not to any estates, interests, charges or powers expressly created or conferred by it) upon the trusts subsisting with respect to it immediately before the execution of that disentailing assurance, or any of such trusts, then, for the purposes of the Settled Land Act 1925 and otherwise, a person entitled to any estate or interest in the settled land under any such previously subsisting trust is entitled to it after the execution of the disentailing assurance as of his former estate or interest³.

Where by a resettlement⁴ of settled land any estate or interest in it is expressed to be limited to any person (whether subject or not to any estate, interest, charge or power expressly created or conferred by the resettlement) in restoration or confirmation of his estate or interest under a prior settlement, then, for the purposes of the Settled Land Act 1925 and otherwise, that person is entitled to the estate or interest so restored or confirmed as of his former estate or interest, and, in addition to the powers exercisable by him in respect of his former estate or interest, he is capable of exercising all such further powers as he could have exercised by virtue of the resettlement if his estate or interest under the prior settlement had not been so restored or confirmed, but he had been entitled under the resettlement only⁵.

1 As to disentailing deeds see REAL PROPERTY vol 39(2) (Reissue) PARA 121 et seq.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 Settled Land Act 1925 s 22(1). See also *Re Cradock's Settled Estates* [1926] Ch 944.

4 As to resettlements see PARA 720 ante.

5 Settled Land Act 1925 s 22(2).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(6) THE ESTATE OWNER/(i) Tenant for Life or Statutory Owner/765. Position where tenant for life has parted with interest.

765. Position where tenant for life has parted with interest.

If it is shown to the satisfaction of the court¹ that a tenant for life² who has by reason of bankruptcy, assignment, incumbrance or otherwise ceased in the court's opinion to have a substantial interest in his estate or interest in the settled land³, or any part of it, has unreasonably refused to exercise any of the powers conferred on him by the Settled Land Act 1925⁴, or consents⁵ to an order⁶, then, on the application of any person interested in the settled land or the part of it affected, the court may make an order authorising the trustees of the settlement⁷ to exercise in the name and on behalf of the tenant for life, any of the powers of a tenant for life under that Act in relation to the settled land or the part of it affected, either generally and in such manner and for such period as the court may think fit, or in a particular instance, and the court may by the order direct that any documents of title in the possession of the tenant for life relating to the settled land be delivered to the trustees of the settlement⁸. Such an order may be made at any time after the estate or interest of the tenant for life under the settlement⁹ has taken effect in possession¹⁰, and notwithstanding that he disposed of it when it was an estate or interest in remainder or reversion¹¹.

While any such order is in force the tenant for life may not, in relation to the settled land or the part of it affected, exercise any of the powers authorised by the order to be exercised in his name and on his behalf, but no person dealing with the tenant for life is affected by any such order, unless the order is for the time being registered as an order affecting land¹².

1 As to the court see PARA 792 post.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also *Re Craven Settled Estates* [1926] Ch 985.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 As to the statutory powers see PARA 775 et seq post. It is necessary to prove a definite refusal on the part of the tenant for life and mere neglect or failure is not sufficient: *Re Thornhill's Settlement* [1941] Ch 24, [1940] 4 All ER 249, CA.

5 The tenant for life must either be a party to the proceedings or his consent in writing must be proved strictly: *Re Cecil's Settled Estates* [1926] WN 262.

6 Ie an order under the Settled Land Act 1925 s 24: see s 24(1).

7 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

8 Settled Land Act 1925 s 24(1). As to the procedure see PARA 792 post.

9 For the meaning of 'settlement' see PARA 678 note 1 ante.

10 For the meaning of 'possession' see PARA 761 note 3 ante.

11 Settled Land Act 1925 s 24(3).

12 Ibid s 24(2). As to the registration of orders affecting land see LAND CHARGES vol 26 (2004 Reissue) PARA 894 et seq; LAND REGISTRATION vol 26 (2004 Reissue) PARA 992.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(6) THE ESTATE OWNER/(i) Tenant for Life or Statutory Owner/766. Statutory owners.

766. Statutory owners.

If under a settlement¹ there is no tenant for life² nor, independently of this provision, a person having by virtue of the Settled Land Act 1925 the powers of a tenant for life³, then: (1) any person of full age on whom such powers are by the settlement expressed to be conferred⁴; and (2) in any other case the trustees of the settlement⁵, have the powers of a tenant for life under that Act⁶. This provision applies to trustees of settlements of land⁷ purchased with money provided by Parliament in consideration of public services where the tenant in tail is restrained from barring or defeating his estate tail⁸, except that, if the tenant in tail is of full age and capacity⁹, the powers may not be exercised without his consent, but a purchaser¹⁰ is not concerned to see or inquire whether such consent has been given¹¹.

1 For the meaning of 'settlement' see PARA 678 note 1 ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante.

3 As to the statutory powers see PARA 775 et seq post.

4 Settled Land Act 1925 s 23(1)(a). In the case of a compound settlement (see PARAS 681-683 ante) the powers can be conferred by any of the instruments constituting the compound settlement: *Re Cowley Settled Estates* [1926] Ch 725; *Re Beaumont Settled Estates* [1937] 2 All ER 353. As to the meaning of 'of full age' see PARA 761 note 1 ante; and as to the age of majority see PARA 605 note 1 ante.

5 Settled Land Act 1925 s 23(1)(b). For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

6 Ibid s 23(1). The persons on whom the powers of a tenant for life are conferred by this provision are generally called 'statutory owners', but they are not so called in the provision itself. 'Statutory owner' means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under the Settled Land Act 1925, but does not include the trustees of the settlement, where by virtue of a court order or otherwise the trustees have power to convey the settled land in the name of the tenant for life (ie under ss 24 (see PARA 765 ante), 68 (as amended) (see PARA 879 post): s 117(1)(xxvi). Cases in which this provision has been held to apply are *Re Frewen* [1926] Ch 580; *Re Bird, Watson v Nunes* [1927] 1 Ch 210; *Re Stamford and Earl of Warrington, Payne v Grey* [1927] 2 Ch 217; *Re Alston-Roberts-West's Settled Estates* [1928] WN 41; *Re Norton, Pinney v Beauchamp* [1929] 1 Ch 84. The powers conferred on statutory owners under this provision, unlike those of a tenant for life, may be released or assigned: *Re Craven Settled Estates* [1926] Ch 985. As to powers of management during a minority or when a person is contingently entitled see PARAS 665-666 ante.

7 For the meaning of 'land' see PARA 680 note 1 ante.

8 See PARA 762 ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 133. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

9 For the meaning of 'tenant in tail' see PARA 762 note 8 ante.

10 For the meaning of 'purchaser' see PARA 702 note 12 ante.

11 Settled Land Act 1925 s 23(2).

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(ii) Enforcement of Equitable Interests

767. Method of enforcing equitable interests.

All equitable interests¹ and powers in or over settled land², whether created³ before or after the date of any vesting instrument⁴ affecting the legal estate⁵, are enforceable against the estate owner⁶, but in the case of personal representatives⁷ without prejudice to their rights and powers for purposes of administration⁸, in the following manner⁹:

- 96 (1) the estate owner must stand possessed of the settled land and its income upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the settled land or its income of which he has notice¹⁰ according to their respective priorities¹¹;
- 97 (2) where any person of full age¹² becomes entitled to require a legal estate in the settled land to be vested in him in priority to the settlement¹³, by reason of a right of reverter, statutory or otherwise, or an equitable right of entry¹⁴ taking effect, or on the ground that his interest ought no longer to be capable of being overreached under the powers of the Settled Land Act 1925, the estate owner is bound, if so requested in writing, to transfer or create such legal estate as may be required for giving legal effect to the rights of the person so entitled¹⁵; and
- 98 (3) where (a) any principal sum is required to be raised on the security of the settled land, by virtue of any trust or by reason of the exercise of an equitable power affecting the settled land, or by any person or persons who under the settlement is or are entitled or together entitled to or has or have a general power of appointment over the settled land¹⁶, whether subject to any equitable charges or powers of charging subsisting under the settlement or not¹⁷; or (b) the settled land is subject to any equitable charge for securing money actually raised and affecting the whole estate the subject of the settlement¹⁸, the estate owner is bound, if so requested¹⁹ in writing, to create such legal estate or charge by way of legal mortgage²⁰ as may be required for raising the money or giving legal effect to the equitable charge²¹. So long, however, as the settlement remains subsisting²², any legal estate or charge by way of legal mortgage so created takes effect, and must be expressed to take effect, subject to any equitable charges or powers of charging subsisting under the settlement which have priority to the interests or powers of the person or persons by or on behalf of whom the money is required to be raised or legal effect is required to be given to the equitable charge, unless the persons entitled to the prior charges or entitled to exercise the powers consent in writing to the same being postponed, but such consent need not be expressed in the instrument creating such legal estate or charge by way of legal mortgage²³.

Except as expressly provided²⁴, no legal estate may, so long as the settlement is subsisting, be transferred or created by the estate owner for giving effect to any equitable interest or power under the settlement²⁵.

A purchaser²⁶ of a legal estate taking free from any equitable interest or power is not affected by these provisions²⁷.

- 1 For the meaning of 'equitable interests' see PARA 695 note 8 ante.
- 2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.
- 3 Where an equitable interest in or power over property arises by statute or operation of law, references to the 'creation' of an interest or power include any interest or power so arising: Settled Land Act 1925 s 117(2).
- 4 For the meaning of 'vesting instrument' see PARA 690 note 8 ante.
- 5 For the meaning of 'legal estate' see PARA 678 note 13 ante.
- 6 For the meaning of 'estate owner' see PARA 697 note 2 ante.
- 7 For the meaning of 'personal representative' see PARA 697 note 6 ante. As to personal representatives in the case of settled land see EXECUTORS AND ADMINISTRATORS.
- 8 As to the rights and powers of personal representatives see the Administration of Estates Act 1925 ss 2(1), 24, 39 (as amended); and EXECUTORS AND ADMINISTRATORS.
- 9 Settled Land Act 1925 s 16(1).
- 10 'Notice' includes constructive notice: *ibid* s 117(1)(xvii).
- 11 *Ibid* s 16(1)(i).
- 12 See PARA 761 note ante.
- 13 For the meaning of 'settlement' see PARA 678 note 1 ante.
- 14 As to the right of reverter or right of entry see REAL PROPERTY vol 39(2) (Reissue) PARA 187.
- 15 Settled Land Act 1925 s 16(1)(ii).
- 16 An estate owner having a general power of appointment over the settled land is entitled under this provision to mortgage the settled land for the purpose of raising money for his own use and benefit: *Re Egerton Settled Estates*[1926] Ch 574.
- 17 Settled Land Act 1925 s 16(1)(iii)(a).
- 18 *Ibid* s 16(1)(iii)(b).
- 19 Where the estate owner is borrowing for his own purposes the request must come from the lender; in other cases, such as one of money being required to be raised by virtue of any trust, the request may be made by the trustees, the beneficiaries or the lender: *Re Egerton Settled Estates*[1926] Ch 574 at 579.
- 20 For the meaning of 'legal mortgage' see PARA 698 note 23 ante.
- 21 Settled Land Act 1925 s 16(1)(iii). This provision does not affect the power conferred by the Settled Land Act 1925 on a tenant for life of raising money by mortgage (see PARAS 849-850 post), or of directing capital money to be applied in discharge of incumbrances (see PARA 808 post): s 16(3). For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.
- 22 As to the duration of settlements see PARA 708 ante.
- 23 Settled Land Act 1925 s 16(1) proviso. It will usually be preferable for the estate owner, where possible, to raise the money required by mortgage under s 71 (as amended) (see PARA 849 post), in order to avoid bringing equitable charges on to the title.
- 24 Ie under *ibid* s 16(1): see s 16(5).
- 25 *Ibid* s 16(5).
- 26 For the meaning of 'purchaser' see PARA 702 note 12 ante.
- 27 Settled Land Act 1925 s 16(8). A purchaser from a tenant for life or statutory owner under the statutory powers will take free from all equitable interests and powers: see PARA 874 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(6) THE ESTATE OWNER/(ii) Enforcement of Equitable Interests/768. Effect of mortgage or charge by estate owner.

768. Effect of mortgage or charge by estate owner.

If a mortgage or charge is expressed to be made by an estate owner¹ pursuant to the statutory provisions², then, in favour of the mortgagee or chargee and persons deriving title under him³, it takes effect in priority to all the trusts of the settlement⁴ and all equitable interests⁵ and powers subsisting or to arise under the settlement except those to which it is expressly made subject, and so takes effect whether or not the mortgagee or chargee has notice of any such trusts, interests or powers, and the mortgagee or chargee is not concerned to see that a case has arisen to authorise the mortgage or charge, or that no more money than was wanted was raised⁶.

Under these provisions effect may be given by means of a legal mortgage⁷ to an agreement for a mortgage, or a charge or lien, whether or not arising by operation of law, if the agreement, charge or lien ought to have priority over the settlement⁸.

1 For the meaning of 'estate owner' see PARA 697 note 2 ante.

2 Ie pursuant to the Settled Land Act 1925 s 16 (see PARA 767 ante): see s 16(2).

3 See further MORTGAGE vol 77 (2010) PARA 101 et seq.

4 For the meaning of 'settlement' see PARA 678 note 1 ante.

5 For the meaning of 'equitable interests' see PARA 695 note 8 ante.

6 Settled Land Act 1925 s 16(2).

7 For the meaning of 'legal mortgage' see PARA 698 note 23 ante. As to legal mortgages see MORTGAGE vol 77 (2010) PARAS 104, 117 et seq.

8 Settled Land Act 1925 s 16(4). As to legal lien and equitable lien see LIEN vol 68 (2008) PARAS 802, 804, 817 et seq., 855 et seq.

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769. Applications to the court.

An application may be made to the court¹ for directions if a question arises or a doubt is entertained whether any and what legal estate ought to be transferred or created pursuant to the statutory provisions² for the enforcement of equitable interests and powers against an estate owner³. If an estate owner refuses or neglects for one month after written demand to transfer or create any such legal estate, or if, by reason of his being outside the United Kingdom⁴, or being unable to be found, or by reason of the dissolution of a corporation⁵, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, then, on the application of any person interested, the court may make a vesting order⁶ transferring or creating the requisite legal estate⁷.

1 As to applications to the court see PARAS 792-793 post.

2 Ie pursuant to the Settled Land Act 1925 s 16 (see PARAS 767-768 ante): see s 16(6).

3 Ibid s 16(6). For the meaning of 'estate owner' see PARA 697 note 2 ante.

4 For the meaning of 'United Kingdom' see PARA 699 note 5 ante.

5 As to the dissolution of corporations see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1304 et seq.

6 For the meaning of 'vesting order' see PARA 688 note 6 ante.

7 Settled Land Act 1925 s 16(7). As to the provisions applying to such vesting orders see s 113(9); and PARA 699 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(6) THE ESTATE OWNER/(iii) Right to Possession/770. Nature of the right.

(iii) Right to Possession

770. Nature of the right.

A tenant for life or statutory owner¹ is ordinarily entitled to possession², by virtue of his position as the estate owner³, but, as he is a trustee for all persons interested in the settled land⁴, it is conceived that his right to possession, being subject to his obligation to give effect to any legal or equitable interest having priority to or equality with his own beneficial interest, would be controlled by the court accordingly⁵.

1 As to the tenant for life or statutory owner see PARA 761 et seq ante.

2 The right of the tenant for life or statutory owner is not barred by reason of any other person entitled to a beneficial interest in the settled land being in possession: see LIMITATION PERIODS vol 68 (2008) PARA 1094.

3 Prior to 1926, a legal tenant for life was entitled as of course to possession and receipt of the rent and profits, notwithstanding the existence of a prior term to secure the payment of annuities: *Ferrand v Wilson* (1845) 4 Hare 344 at 368. An equitable tenant for life was not so entitled (*Taylor v Taylor, ex p Taylor*(1875) LR 20 Eq 297), but he could usually obtain possession by applying to the court. As to the principles on which the court exercised its discretion in such cases see *Re Earl of Stamford and Warrington, Payne v Grey*[1925] Ch 162 (revised on another ground [1925] Ch 589, CA), and the cases there considered. See also REAL PROPERTY vol 39(2) (Reissue) PARA 2 et seq.

4 See PARA 767 ante.

5 For example, an assignee of the beneficial interest of a tenant for life would clearly be entitled to possession as against the tenant for life: see REAL PROPERTY vol 39(2) (Reissue) PARA 184; EQUITY vol 16(2) (Reissue) PARA 601. As to the method of enforcing equitable interests see PARA 767 ante. As to outgoings see PARA 961 et seq post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(6) THE ESTATE OWNER/(iii) Right to Possession/771. Custody of title deeds.

771. Custody of title deeds.

A tenant for life¹, being the person in whom the legal estate is vested, is normally, but not necessarily², entitled to the custody of the title deeds³. The court does not interfere with this right, except in cases where the tenant for life has been guilty of misconduct so that the safety of the deeds has been endangered⁴, or where the rights of others intervene and it becomes necessary for the court to take charge of the title deeds in order to carry out the administration of the property⁵. However, where it is shown to the satisfaction of the court⁶ that a tenant for life who has, by reason of bankruptcy, assignment, incumbrance or otherwise, ceased in the court's opinion to have a substantial interest in his estate or interest in the settled land or any part of it, has unreasonably refused to exercise any of the powers conferred on him by the Settled Land Act 1925 or consents to an order, then, on the application of any person interested in the settled land or the part of it affected, the court may make an order directing that any documents of title in the possession of the tenant for life relating to the settled land be delivered to the trustees of the settlement⁷.

1 As to the tenant for life see PARA 761 et seq ante.

2 See the Settled Land Act 1925 s 98(3) (see PARA 892 post); and SALE OF LAND vol 42 (Reissue) PARA 131. See also *Allwood v Heywood* (1863) 1 H & C 745; *Re Beddoe, Downes v Cottam* [1893] 1 Ch 547 at 557, CA, per Lindley LJ; *Clayton v Clayton* [1930] 2 Ch 12.

3 *Strode v Blackburne* (1796) 3 Ves 222; *Garner v Hannington* (1856) 22 Beav 627. This does not include deeds of appointment of trustees (*Clayton v Clayton* [1930] 2 Ch 12) or securities for capital money (see the Settled Land Act 1925 s 98(3); and PARA 892 post).

4 The fact that the tenant for life has taken the deeds out of the jurisdiction may be a ground for thinking that there is danger to them if they remain in his custody (*Jenner v Morris* (1866) 1 Ch App 603), but the mere fact that he has for many years been resident abroad is no objection (*Leathes v Leathes* (1877) 5 ChD 221). If the dicta in *Reeves v Reeves* (1724) 9 Mod Rep 128; *Ivie v Ivie* (1738) 1 Atk 429; and *Smith v Cooke* (1746) 3 Atk 378 at 382, assert an unqualified right in the remainderman to have the title deeds brought into court, they will not now be followed: see *Ford v Peering* (1789) 1 Ves 72.

5 *Stanford v Roberts* (1871) 6 Ch App 307; *Leathes v Leathes* (1877) 5 ChD 221 (dissenting from *Pyncent v Pyncent* (1747) 3 Atk 571, and *Warren v Rudall, ex p Godfrey* (1860) 1 John & H 1). Where a sale has been ordered to raise portions, but the tenant for life refused to produce the title deeds of the estate, a receiver of the rents and profits was appointed: *Brigstocke v Mansel* (1818) 3 Madd 47. Where deeds have been brought into court by the tenant for life for the purposes of an action, the court on the conclusion of the proceedings has ordered them to be redelivered to him: *Webb v Lord Lymington, Webb v Webb* (1757) 1 Eden 8; *Duncombe v Mayer* (1803) 8 Ves 320; but see *Hicks v Hicks* (1785) 2 Dick 650; *Lady Langdale v Briggs* (1856) 8 De GM & G 391; *Jenner v Morris* (1866) 1 Ch App 603. However, the court only delivers deeds out to the party who has deposited them: *Plunkett v Lewis* (1847) 6 Hare 65.

6 As to the court see PARA 792 post.

7 See the Settled Land Act 1925 s 24(1); and PARA 765 ante. Such a direction will only be given in an order under this provision authorising the trustees to execute the statutory powers: see PARA 765 ante.

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772. Indorsement of notice of vesting instrument.

Where, if the settlement¹ were not disclosed, it would appear that the tenant for life² had a general power of appointment over, or was absolutely and beneficially entitled to, the settled land³, the trustees of the settlement⁴ must, before they deliver the documents of title to him, require that notice of the last or only principal vesting instrument⁵ be written on one of the documents under which the tenant for life acquired his title, and may, if the documents are not in their possession, require such notice to be written, but in the latter case they will not be liable in any way for not requiring the notice to be written⁶.

- 1 For the meaning of 'settlement' see PARA 678 note 1 ante.
- 2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.
- 3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.
- 4 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.
- 5 For the meaning of 'principal vesting instrument' see PARA 698 note 1 ante.
- 6 Settled Land Act 1925 s 98(3) proviso.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(6) THE ESTATE OWNER/(iii) Right to Possession/773. Effect of purchase of life interest.

773. Effect of purchase of life interest.

The tenant for life¹ is expressly prohibited from delivering the documents of title relating to the settled land² to a purchaser³ of his beneficial interest who is not also a purchaser of the whole of the settled land to which those documents relate⁴. In the case of a conveyance of or dealing with his beneficial interest by a tenant for life after 1925 in favour of a purchaser, the purchaser is not entitled to the possession of the documents of title relating to the settled land but has the same rights with respect to the title deeds as if the tenant for life had given to him a statutory acknowledgment of his right to production and delivery of copies of them, and a statutory undertaking for their safe custody⁵.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 For the meaning of 'purchaser' see PARA 702 note 12 ante.

4 Settled Land Act 1925 s 111.

5 Ibid s 111 proviso. As to acknowledgments of the right to production of title deeds see SALE OF LAND vol 42 (Reissue) PARA 132. The statutory powers remain exercisable by the tenant for life notwithstanding any assignment by him of his beneficial interest: see PARA 777 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(6) THE ESTATE OWNER/(iii) Right to Possession/774. Insurance by the tenant for life.

774. Insurance by the tenant for life.

In the absence of special contract or obligation¹, a tenant for life is not bound to insure the settled premises². Accordingly, where policies have been effected and kept up by or on behalf of a tenant in tail³, who is under no obligation to insure and, being a child, cannot be credited with any intention of making the policy money a present to the settled estate, the policy money belongs absolutely to the tenant in tail⁴. In the case of a tenant for life without impeachment of waste, the absence of liability to insure carries with it a right to receive money forthcoming by reason of the insurance which he is under no liability to effect⁵, and this is so in the case both of an insurance of buildings and of chattels settled to devolve with land⁶. However, the remaindermen have a statutory right to require insurance money on buildings to be applied in replacing the buildings insured⁷, and if they exercise this right the tenant for life is not entitled to a charge for the amount so applied⁸.

Any money received since 1925⁹, either by trustees or any beneficiary, under a policy of insurance against the loss or damage, whether by fire or otherwise, of any property subject to a trust or to a settlement within the Settled Land Act 1925¹⁰, is, however, capital money for the purposes of the trust or settlement, as the case may be, whenever the policy was effected, if the policy has been kept up under any trust in that behalf, or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste¹¹.

1 As to the obligation on the tenant for life to insure buildings comprised in an improvement executed under the statutory provisions see the Settled Land Act 1925 s 88; and PARA 964 post. As to the obligation on a tenant for life of settled leaseholds to bear the cost of insurance if there is a covenant to insure see PARA 961 post. A tenant for life is not bound to keep furniture insured: *Re Betty, Betty v A-G* [1899] 1 Ch 821. As to the tenant for life see PARA 761 et seq ante.

2 *Re Bennett, Jones v Bennett* [1896] 1 Ch 778 at 787, CA; *Re McEacharn, Gambles v McEacharn* (1911) 103 LT 900. As to the power of trustees to insure personal property see the Trustee Act 1925 s 19 (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1047.

3 As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

4 *Seymour v Vernon* (1852) 16 Jur 189; *Warwicker v Bretnall* (1882) 23 ChD 188 (distinguishing *Rook v Worth* (1750) 1 Ves Sen 460; *Norris v Harrison* (1817) 2 Madd 268; *Parry v Ashley* (1829) 3 Sim 97).

5 *Gaussen v Whatman* (1905) 93 LT 101. As to the right of the tenant for life and remaindermen to insure in respect of their respective beneficial interests see INSURANCE vol 25 (2003 Reissue) PARA 614. If the tenant for life insures for the full value of the property and the insurance company pays the entire sum over to him without raising any question as to the extent of his interest, he does not become a trustee of the sum for all persons interested in the property: *Gaussen v Whatman* supra. A condition in a settlement that a tenant for life is to keep the settled property in good and tenable repair creates an obligation upon him to rebuild premises destroyed by fire: *Re Skingley* (1851) 3 Mac & G 221; *Gregg v Coates, Hodgson v Coates* (1856) 23 Beav 33. As to waste see PARA 986 et seq post.

6 *Re Quicke's Trusts, Poltimore v Quicke* [1908] 1 Ch 887; *Re Bladon, Dando v Porter* [1911] 2 Ch 350 at 354 per Neville J. As to chattels settled to devolve with land see PARAS 799, 937 et seq post.

7 See the Fires Prevention (Metropolis) Act 1774 s 83; and INSURANCE vol 25 (2003 Reissue) PARAS 637-639. This provision applies to the whole of England: *Re Barker, ex p Gorely* (1864) 4 De GJ & Sm 477; *Re Quicke's Trusts, Poltimore v Quicke* [1908] 1 Ch 887; *Sinnott v Bowden* [1912] 2 Ch 414. See, however, *Westminster Fire Office v Glasgow Provident Investment Society* (1888) 13 App Cas 699 at 716, HL.

- 8 *Re Quicke's Trusts, Poltimore v Quicke* [1908] 1 Ch 887.
- 9 See the Trustee Act 1925 s 20(6); and TRUSTS vol 48 (2007 Reissue) PARA 1048.
- 10 As to the meaning of 'settlement within the Settled Land Act 1925' see PARA 675 et seq ante.
- 11 See the Trustee Act 1925 s 20(1); and TRUSTS vol 48 (2007 Reissue) PARA 1048. See also *Mumford Hotels Ltd v Wheeler* [1964] Ch 117, [1963] 3 All ER 250. As to the effect of, and qualifications on, this provision see TRUSTS vol 48 (2007 Reissue) PARA 1048. The same principle applied prior to 1926, if a tenant for life was under an obligation to insure or trustees had power to insure: *Re Bladon, Dando v Porter* [1911] 2 Ch 350 at 354 per Neville J. As to capital money generally see PARA 795 et seq post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(i) Characteristics/775. Fiduciary position of tenant for life.

(7) STATUTORY POWERS

(i) Characteristics

775. Fiduciary position of tenant for life.

In exercising¹ the statutory powers², or any additional or larger powers conferred by the settlement³, a tenant for life⁴ or statutory owner⁵ must have regard to the interests of all parties entitled under the settlement⁶, and is deemed in relation to the exercise to be in the position and to have the duties and liabilities of a trustee for those parties⁷, but only according to their rights as created by the settlement⁸. It follows that a purchaser who knows that the tenant for life is exercising a statutory power improperly, and is aware that what the tenant for life is doing would amount to a breach of trust, has a right to decline to complete⁹.

It is no objection to a proposed transaction that it will benefit the tenant for life personally, and may be to the detriment of the remaindermen¹⁰, especially where the evidence adduced on behalf of the remaindermen is speculative evidence of a future increase of the value of the settled property, for it is the right of the tenant for life to derive any benefit he can from his estate¹¹, but he must not act unjustly towards those whose interests he is bound to protect¹², including the tenants on the estate¹³ and existing incumbrancers¹⁴. Moreover, the exercise by the tenant for life of his powers must be in good faith for the benefit of the estate as a whole, and not for the sole purpose of obtaining a benefit for himself or some person connected with him, such as his wife, at the expense of the remaindermen¹⁵, and he is not justified in forwarding his private views to their detriment¹⁶. It necessarily follows that, if a bribe is given to induce the tenant for life to exercise his powers, the transaction can be set aside by the remaindermen, whether they are injured or not¹⁷.

Although the corresponding statutory provisions which were in force prior to 1926 imposed on the tenant for life the duties of a trustee, they did not confer on him the rights of a trustee as to, for instance, his costs¹⁸. However, a tenant for life is not necessarily a trustee of every adventitious profit which may accrue to him as a consequence of an exercise in good faith of his statutory powers¹⁹.

1 Whether a statutory power is exercised or not depends on statute and intention, and accordingly, a deed expressed to operate under the Settled Land Act 1925 to effect a sale, exchange, lease, mortgage, charge or other disposition is effective, so far as it can be (see PARA 874 post), and a purchaser of a legal estate from personal representatives is entitled to assume that they act under their statutory powers (see PARA 887 post). A lease granted by a tenant for life who believed that he was absolute owner was valid to the extent of the statutory power of leasing, even though not expressed to be made in exercise of that power, since it was the obvious intention that the lease should be good: *Mogridge v Clapp*[1892] 3 Ch 382 at 395, CA. As to the effect of leases not authorised by statutory or express powers see PARA 883 post.

2 Ie all powers conferred by the Settled Land Act 1925 on a tenant for life or person having the powers of a tenant for life: see PARA 762 ante. As to the particular powers see PARA 794 et seq post.

3 *Re Duke of Westminster's Settled Estates, Duke of Westminster v Earl of Shaftesbury*[1921] 1 Ch 585; *Re Cowley Settled Estates*[1926] Ch 725. As to the exercise of such additional or larger powers see PARA 880-881 post.

4 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

5 For the meaning of 'statutory owner' see PARA 766 note 6 ante.

6 For the meaning of 'settlement' see PARA 678 note 1 ante.

7 Settled Land Act 1925 s 107(1). See also *Owen v Williams* (1773) Amb 734; *Pole v Pole* (1865) 2 Drew & Sm 420; *Lloyd-Jones v Clark-Lloyd*[1919] 1 Ch 424, CA; *Re Lord Boston's Will Trusts, Inglis v Boston*[1956] Ch 395, [1956] 1 All ER 593.

8 *Re Lacon's Settlement, Lacon v Lacon*[1911] 2 Ch 17, CA. The provision by a tenant for life or statutory owner, at his own expense, of dwellings available for the working classes on any settled land is not to be deemed to be an injury to any interest in reversion or remainder in that land, but such provision may not be made by a tenant for life or statutory owner without the previous approval in writing of the trustees of the settlement: Settled Land Act 1925 s 107(2). For the meaning of 'settled land' see PARA 680 text to note 2 ante; and for the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. The meaning of the expression 'working classes' as used in the Housing Act 1936 (repealed) was discussed by Denning J in *H E Green & Sons v Minister of Health*[1948] 1 KB 34 at 38, [1947] 2 All ER 469 at 470-471. See also *Belcher v Reading Corp*n[1950] Ch 380 at 392, [1949] 2 All ER 969 at 984 per Romer J.

9 *Hatten v Russell*(1888) 38 ChD 334 at 345. See also PARA 784 post. Cf *Re Handman and Wilcox's Contract*[1902] 1 Ch 599, CA; and *SALE OF LAND* vol 42 (Reissue) PARA 239. As to the fiduciary position of trustees see *TRUSTS* vol 48 (2007 Reissue) PARA 954 et seq.

10 *Re Lord Stamford's Estate* (1887) 56 LT 484; *Re Hare, Leycester-Penrhyn v Leycester-Penrhyn* (1908) 43 L Jo 659. See also *Re Wix, Hardy v Lemon*[1916] 1 Ch 279.

11 *Thomas v Williams*(1883) 24 ChD 558.

12 *Re Richardson, Richardson v Richardson*[1900] 2 Ch 778; *Re Earl of Stamford and Warrington, Payne v Grey*[1916] 1 Ch 404.

13 *Re Duke of Marlborough's Settlement, Duke of Marlborough v Marjoribanks*(1885) 30 ChD 127 (affd (1886) 32 ChD 1, CA); *Lord Bruce v Marquess of Ailesbury*[1892] AC 356, HL; *Re Lord Stafford's Settlement and Will, Gerard v Stafford*[1904] 2 Ch 72.

14 *Hampden v Earl of Buckinghamshire*[1893] 2 Ch 531, CA.

15 *Dowager Duchess of Sutherland v Duke of Sutherland*[1893] 3 Ch 169; *Middlemas v Stevens*[1901] 1 Ch 574; *Re Hunt's Settled Estates, Bulteel v Lawdeshayne*[1905] 2 Ch 418 (on appeal [1906] 2 Ch 11, CA); *Re Wharncliffe's Trusts, Wharncliffe v Stuart Wortley* (1904) 48 Sol Jo 176, CA; *Re Gladwin's Trust*[1919] 1 Ch 232; *Re Cornwallis-West, ex p Trustee* (1919) 88 LJKB 1237; *Re Sutherland Settlement Trusts*[1953] Ch 792, [1953] 2 All ER 27.

16 *Re Earl of Somers, Cocks v Lady Somerset* (1895) 11 TLR 567. See, however, *Re Earl of Egmont's Settled Estates, Lefroy v Earl of Egmont*[1906] 2 Ch 151.

17 *Chandler v Bradley*[1897] 1 Ch 315.

18 *Sebright v Thornton* [1885] WN 176; *Re Llewellyn, Llewellyn v Williams*(1887) 37 ChD 317. After 1925, however, in any case in which the tenant for life can be said to be acting as trustee of the legal estate under the Settled Land Act 1925 s 16(1)(i) (see PARA 767 ante), it would seem that he would be entitled to the same rights as to costs as an ordinary trustee. As to costs incurred by trustees see *TRUSTS* vol 48 (2007 Reissue) PARA 907 et seq.

19 See *Re Pelly's Will Trusts, Ransome v Pelly*[1957] Ch 1 at 13, [1956] 2 All ER 326 at 329, CA, per Lord Evershed MR (a tenant for life was entitled to retain the benefit of income tax relief for improvements the cost of which was paid out of capital money, there being no right of recoupment in respect of the capital money expended). See also PARA 944 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(i) Characteristics/776. Delegation of powers.

776. Delegation of powers.

For a period not exceeding 12 months, a tenant for life¹ or statutory owner² may delegate to any person, including a trust corporation³, the execution or exercise of all or any of the trusts, powers and discretions vested in him⁴. Before or within seven days after giving a power of attorney, the donor of the power must give written notice⁵:

- 99 (1) in the case of a tenant for life, to the trustees of the settlement⁶ and to each person, if any, who together with the person giving the notice constitutes the tenant for life⁷; and
- 100 (2) in the case of a statutory owner, to each of the persons, if any, who together with the person giving the notice constitute the statutory owner, and in the case of a statutory owner, being a person of full age on whom the powers of a tenant for life are by the settlement expressed to be conferred⁸ to the trustees of the settlement⁹.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante; definition applied by the Trustee Act 1925 s 68(1) PARA (15).

2 For the meaning of 'statutory owner' see PARA 766 note 6 ante; definition applied by ibid s 68(1) PARA (15).

3 See ibid s 25(2) (as substituted); and TRUSTS vol 48 (2007 Reissue) PARA 984. For the meaning of 'trust corporation' see PARA 705 note 6 ante.

4 See ibid s 25(1), (8) (as substituted); and TRUSTS vol 48 (2007 Reissue) PARA 984. If the person delegating such trusts, powers or discretions is one of two persons constituting the tenant for life or statutory owner and the other of such persons is not a trust corporation, that other person may not be appointed to be an attorney under this provision: see s 25(2) (as substituted); and TRUSTS vol 48 (2007 Reissue) PARA 984. Delegation cannot be effected by a tenant for life or statutory owner by a general power of attorney under the Powers of Attorney Act 1971: see s 10; and AGENCY vol 1 (2008) PARA 30.

5 The notice must specify the date on which the power comes into operation and its duration, the donee of the power, the reason why the power is given and, where some only are delegated, the trusts, powers and discretions delegated: see the Trustee Act 1925 s 25(4) (as substituted); and TRUSTS vol 48 (2007 Reissue) PARA 984.

6 As to the trustees of the settlement see PARA 750 et seq ante.

7 See the Trustee Act 1925 s 25(4), (8)(b) (as substituted); and TRUSTS vol 48 (2007 Reissue) PARA 984.

8 As to such person being a statutory owner see the Settled Land Act 1925 s 23(1)(a); and PARA 766 ante.

9 Trustee Act 1925 s 25(4), (8)(c) (as substituted: see TRUSTS vol 48 (2007 Reissue) PARA 984). The instrument creating the power of attorney must be attested by at least one witness: see s 25(3) (as substituted); and TRUSTS vol 48 (2007 Reissue) PARA 984.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(i) Characteristics/777.
Statutory powers inalienable.

777. Statutory powers inalienable.

A tenant for life may make any arrangement that he pleases for disposing of his beneficial interest¹, but a contract by him not to exercise his statutory powers or any of them is void². The statutory powers³ are not capable of assignment⁴ or release and do not pass to an assignee, by operation of law or otherwise, of the tenant for life, but remain exercisable by the tenant for life after and notwithstanding any assignment, by operation of law or otherwise, of his estate or interest under the settlement⁵ and notwithstanding that the estate or interest of the tenant for life under the settlement was not in possession when the assignment was made or took effect by operation of law⁶. This prohibition against alienation does not apply to statutory owners⁷.

1 *Re Trenchard, Trenchard v Trenchard* [1902] 1 Ch 378.

2 Settled Land Act 1925 s 104(2). For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 Any additional or larger powers conferred by the settlement are also incapable of assignment or release: see *ibid* s 109(2); and PARAS 880-881 post.

4 *Ibid* s 104 extends to assignments made or coming into operation before or after 1925, and for these purposes, 'assignment' includes assignment by way of mortgage, and any partial or qualified assignment and any charge or incumbrance, 'assignee' has a corresponding meaning, and 'assignee for value' includes persons deriving title under the original assignee: s 104(12). As to the power to delegate the statutory powers see PARA 776 ante.

5 For the meaning of 'settlement' see PARA 678 note 1 ante.

6 Settled Land Act 1925 s 104(1). As to the effect of an assurance to the next remainderman, however, see PARA 778 post. In the case of bankruptcy of the tenant for life, the legal estate in the settled land does not vest in the trustee in bankruptcy unless and until the tenant for life becomes absolutely and beneficially entitled to the settled land free from all limitations, powers and charges taking effect under the settlement: see PARA 698 ante. As to the powers of the court where a tenant for life has parted with his interest see PARA 765 ante.

7 *Re Craven Settled Estates* [1926] Ch 985. As to statutory owners see PARA 766 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(i) Characteristics/778. Effect of assurance of life estate to next remainderman.

778. Effect of assurance of life estate to next remainderman.

If the estate or interest of a tenant for life¹ under a settlement² has been or is absolutely assured either by the tenant for life himself or by any one in whom the life estate is vested³ with intent⁴ to extinguish the same, whenever the assurance⁵ was effected, to the person next entitled in remainder or reversion under the settlement⁶, then the statutory powers of the tenant for life under the Settled Land Act 1925, in reference to the property⁷ affected by the assurance, and notwithstanding the provisions rendering his statutory powers inalienable⁸, cease to be exercisable by him and from that time become exercisable as if he were dead, but without prejudice to any incumbrance affecting the estate or interest assured, and to the rights to which any incumbrancer would have been entitled if those powers had remained exercisable by the tenant for life⁹. This provision applies whether or not any term of years or charge intervenes, or the estate of the remainderman or reversioner is liable to be defeated, and whether or not the estate or interest of the tenant for life under the settlement was in possession at the date of the assurance, but unless the assurance provides to the contrary, it does not operate to accelerate any such intervening term of years or charge¹⁰.

These provisions apply so long as the settlement subsists, but an assignment by a tenant for life of his life estate may bring the settlement to an end¹¹.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'settlement' see PARA 678 note 1 ante.

3 *Re Shawdon Estates Settlement* [1930] 2 Ch 1, CA.

4 The intent must be that of the assignor: *Re Shawdon Estates Settlement* [1930] 2 Ch 1, CA.

5 In this provision, 'assurance' means any surrender, conveyance, assignment or appointment under a power (whether vested in any person solely, or jointly in two or more persons) which operates in equity to extinguish the estate or interest of the tenant for life, and 'assured' has a corresponding meaning: Settled Land Act 1925 s 105(2). For the meaning of 'conveyance' see PARA 698 note 12 ante. As to assurances generally see REAL PROPERTY vol 39(2) (Reissue) PARA 232 et seq.

6 A person is not next entitled for this purpose if there is an intervening limitation which may still take effect: *Re Maryon-Wilson's Instruments, Blofeld v Maryon-Wilson* [1971] Ch 789, [1969] 3 All ER 558.

7 'Property' includes any thing in action, and any interest in real or personal property: Settled Land Act 1925 s 117(1)(xx).

8 See PARA 777 ante.

9 Settled Land Act 1925 s 105(1) (amended by the Law of Property (Amendment) Act 1926 s 7, Schedule). On such an assurance being executed the assignee will, if the land remains settled land, become entitled to have a vesting deed executed in his favour (see PARA 698 ante), but until a new vesting deed is executed a purchaser will be entitled to deal with the person named in the existing vesting deed as the tenant for life: see PARA 886 post.

10 Settled Land Act 1925 s 105(1). This provision does not prejudice anything done by the tenant for life before 1926 in exercise of any power operating under the Settled Land Acts 1882 to 1890 (see PARA 678 note 1 ante): Settled Land Act 1925 s 105(1).

11 Cf *Re Hind, Bernstone v Montgomery* [1933] Ch 208.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(i) Characteristics/779. Effect of assignment for value.

779. Effect of assignment for value.

In the case of an assignment for value¹ made or coming into operation after 1925, the consent of the assignee is not requisite for the exercise by the tenant for life² of any of the statutory powers³. However,

- 101 (1) the assignee is entitled to the same or the like estate or interest in or charge on the land, money or securities⁴ for the time being representing the land, money or securities comprised in the assignment as he had by virtue of the assignment in the last-mentioned land, money or securities⁵;
- 102 (2) if the assignment so provides, or if it takes effect by operation of the law of bankruptcy, and after notice of it to the trustees of the settlement⁶, no investment or application of capital money for the time being affected by the assignment may be made without the consent of the assignee, except an investment in securities authorised by statute for the investment of trust money⁷; and
- 103 (3) unless the assignment otherwise provides, notice of the intended transaction must be given to the assignee, but a purchaser is not concerned to see or inquire whether such notice has been given⁸.

1 For the meaning of 'assignment' see PARA 777 note 4 ante. An assignment, by operation of the law of bankruptcy, which comes into operation after 1925 is deemed to be an assignment for value for the purpose of the Settled Land Act 1925 s 104: s 104(10). As to assignment taking effect by operation of the law of bankruptcy see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 216 et seq.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 Settled Land Act 1925 s 104(4).

4 For the meaning of 'land' see PARA 680 note 1 ante; and for the meaning of 'securities' see PARA 693 note 1 ante.

5 Settled Land Act 1925 s 104(4) proviso (a).

6 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

7 Settled Land Act 1925 s 104(4) proviso (b). As to such consent see PARA 780 post. As to what securities are authorised for the investment of trust money see PARA 668 ante; and TRUSTS vol 48 (2007 Reissue) PARA 1020 et seq.

8 Ibid s 104(4) proviso (c). For the meaning of 'purchaser' see PARA 702 note 12 ante. As to the position where the assignment was made before 1926 see s 104(3), (5).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(i) Characteristics/780. Consent to investment after assignment.

780. Consent to investment after assignment.

Where there has been an assignment for value¹, consent to any such investment or application of capital money may be given by specified persons².

The consent may be given by a trustee or personal representative³ who is an assignee for value⁴, and the trustee or personal representative may by the consent bind all persons interested in the trust estate, or the estate of the testator or intestate⁵.

If, by the original assignment or by any subsequent disposition, the estate or interest assigned or created by the original assignment, or any part of it or any derivative interest, is settled on persons in succession, whether subject to any prior charge or not, and there is no trustee or personal representative in whom the entirety of the estate or interest so settled is vested, the consent may be given by the person for the time being entitled in possession under the limitations of that settlement, whether as trustee or beneficiary, or who would, if of full age⁶, be so entitled, and notwithstanding any charge or incumbrance subsisting or to arise under that settlement, and that person may by the consent bind all persons interested or to become interested under the settlement⁷.

If an assignee for value or any person who has power to give such consent is a child⁸, the consent may be given on his behalf by his parents or parent or testamentary or other guardian named in the order⁹.

The court¹⁰ has power to authorise any person interested under any assignment to consent to any such investment or application of capital money, on behalf of himself and all other persons interested, or who may become interested under the assignment¹¹.

1 For the meaning of 'assignment' see PARA 777 note 4 ante. See also PARA 779 note 1 ante.

2 See the Settled Land Act 1925 s 104(6)-(9) (see the text and notes 5-11 infra). As to the consent to the exercise by the tenant for life of his statutory powers where the assignment was made before 1926 see s 104(3), (6)-(9). For the meaning of 'tenant for life' see PARA 671 note 5 ante.

3 For the meaning of 'personal representative' see PARA 697 note 6 ante.

4 As to the meaning of 'assignee for value' see PARA 777 note 4 ante.

5 See the Settled Land Act 1925 s 104(6).

6 As to consents on behalf of a child see the text to note 8 infra. As to the age of majority see PARA 605 note 1 ante.

7 Settled Land Act 1925 s 104(7).

8 See PARA 665 note 13 ante.

9 See the Settled Land Act 1925 s 104(8). As to guardians see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 144 et seq.

10 As to the court see PARA 792 post.

11 See the Settled Land Act 1925 s 104(9). As to capital money see PARA 795 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(i) Characteristics/781. Rights of purchaser of life interest.

781. Rights of purchaser of life interest.

Where (1) on 1 January 1926 the legal beneficial interest of a tenant for life¹ under a settlement² was vested in a purchaser³; or (2) after 31 December 1925 a tenant for life conveys or deals with his beneficial interest in possession in favour of a purchaser, and the interest so conveyed or created would, but for the restrictions imposed by statute on the creation of legal estates⁴, have been a legal interest⁵, the purchaser (without prejudice to the powers conferred by the Settled Land Act 1925 on the tenant for life) has and is entitled to exercise all the same rights and remedies⁶ as he would have had or have been entitled to exercise if the interest had remained or been a legal interest and the reversion, if any, on any leases or tenancies derived out of the settled land⁷ had been vested in him⁸.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'settlement' see PARA 678 note 1 ante.

3 Settled Land Act 1925 s 111(a). For the meaning of 'purchaser' see PARA 702 note 12 ante.

4 As to what legal estates can be created see REAL PROPERTY vol 39(2) (Reissue) PARA 91 et seq.

5 Settled Land Act 1925 s 111(b).

6 Eg to distrain or recover possession on forfeiture: see REAL PROPERTY vol 39(2) (Reissue) PARA 253.

7 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

8 Settled Land Act 1925 s 111. The purchaser is not entitled to the possession of the documents of title: see PARA 773 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(i) Characteristics/782. Prohibitions against exercise of powers void.

782. Prohibitions against exercise of powers void.

Notwithstanding anything in a settlement¹, the exercise by a tenant for life² or statutory owner³ of his statutory powers cannot occasion a forfeiture⁴. If in a settlement, will, assurance or other instrument⁵, whenever made⁶, a provision is inserted: (1) purporting or attempting, by way of direction, declaration or otherwise, to forbid a tenant for life or statutory owner to exercise any statutory power, or his right to require the settled land to be vested in him⁷; or (2) attempting or tending or intended, by a limitation⁸, gift or disposition over of settled land, or of other real or any personal property⁹, or by the imposition of any condition¹⁰, or by forfeiture, or in any other manner whatever, to prohibit or prevent him from exercising, or to induce him to abstain from exercising, or to put him into a position inconsistent with his exercising any power under the Settled Land Act 1925, or his right to require the settled land to be vested in him¹¹, that provision, so far as it purports, or attempts or tends or is intended to have, or would or might have, such operation, is deemed to be void¹². For these purposes, an estate or interest limited to continue so long only as a person abstains from exercising any such power or right is and takes effect as an estate or interest to continue for the period for which it would continue if that person were to abstain from exercising the power or right, discharged from liability to determination or cesser by or on his exercising the same¹³.

It follows that a gift over on failure to comply with a condition as to residence in a particular house may be defeated by the exercise of the statutory powers¹⁴, and it is immaterial that the gift over is of property settled by a person other than the original settlor by an instrument other than the original settlement¹⁵. Such a condition, however, is void only so far as it is a fetter on the exercise of the statutory powers¹⁶, and a testator can oblige a tenant for life to reside in a mansion until it is disposed of by exercise of the statutory powers, and his failure to comply with this condition causes him to forfeit his interest¹⁷. However, a provision that the tenant for life of a house while in occupation is to be free from all outgoings does not tend to induce him to refrain from exercising the statutory power of sale¹⁸, nor does a direction terminating a provision which is neither for the benefit of the tenant for life nor ancillary to the enjoyment by him of the trust property¹⁹.

1 For the meaning of 'settlement' see PARA 678 note 1 ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 For the meaning of 'statutory owner' see PARA 766 note 6 ante.

4 Settled Land Act 1925 s 106(3).

5 For the meaning of 'will' see PARA 695 note 3 ante; and for the meaning of 'instrument' see PARA 688 note 7 ante.

6 See *Re Smith, Grose-Smith v Bridger* [1899] 1 Ch 331.

7 Settled Land Act 1925 s 106(1)(a). For the meaning of 'settled land' see PARA 680 text to note 2 ante.

8 For the meaning of 'limitation' see PARA 708 note 4 ante.

9 See *Re Ames, Ames v Ames* [1893] 2 Ch 479; *Re Smith, Grose-Smith v Bridger* [1899] 1 Ch 331; *Re Fitzgerald, Brereton v Day* [1902] 1 IR 162; *Re Patten, Westminster Bank Ltd v Carlyon* [1929] 2 Ch 276; *Re Herbert, Herbert v Lord Bicester* [1946] 1 All ER 421.

10 See *Re Richardson, Richardson v Richardson* [1904] 2 Ch 777, where a direction that a beneficiary should provide a home for a named person was held to be a condition. See also PARA 762 note 14 ante.

11 Settled Land Act 1925 s 106(1)(b).

12 Ibid s 106(1). See also *Re Patten, Westminster Bank Ltd v Carlyon* [1929] 2 Ch 276. This provision does not apply unless the settlement contains a provision which, but for an attempted prohibition, would constitute a tenant for life capable of exercising the statutory powers: *Re Hazle's Settled Estates* (1885) 29 ChD 78, CA; *Re Atkinson, Atkinson v Bruce* (1886) 31 ChD 577, CA. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

13 Ibid s 106(2).

14 *Re Paget's Settled Estates* (1885) 30 ChD 161; *Re Dalrymple, Bircham v Springfield* (1901) 49 WR 627; *Re Adair and Settled Land Act* [1909] 1 IR 311; *Re Acklom, Oakeshott v Hawkins* [1929] 1 Ch 195; *Re Orlebar, Orlebar v Orlebar* [1936] Ch 147. As to conditions as to residence generally see PARA 741 note 4 ante.

15 *Re Smith, Grose-Smith v Bridger* [1899] 1 Ch 331; *Re Orlebar, Orlebar v Orlebar* [1936] Ch 147.

16 *Re Trenchard, Trenchard v Trenchard* [1902] 1 Ch 378; *Re Bellew, O'Reilly v Bellew* [1924] 1 IR 1, Ir CA; *Re Patten, Westminster Bank Ltd v Carlyon* [1929] 2 Ch 276.

17 *Re Haynes, Kemp v Haynes* (1887) 37 ChD 306; *Re Edwards' Settlement* [1897] 2 Ch 412; *Re Trenchard, Trenchard v Trenchard* [1902] 1 Ch 378.

18 *Re Simpson, Clarke v Simpson* [1913] 1 Ch 277; *Re Burden, Mitchell v Trustees of St Luke's Hostel* [1948] 1 All ER 31.

19 *Re Aberconway's Settlement Trusts, McLaren v Aberconway* [1953] Ch 647, [1953] 2 All ER 350, CA.

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(ii) Preliminaries to exercise of Statutory Powers

A. NOTICE TO, AND RECEIPT OF, TRUSTEES

783. Requirement, form and effect of notice.

A tenant for life¹ or statutory owner², when intending to make a sale, exchange, lease³, mortgage or charge, or to grant an option, must give notice⁴, which (except in the case of a mortgage or charge⁵) may be notice of a general intention, of his intention in that behalf to each of the trustees of the settlement⁶, unless the intention is to grant a lease for a term not exceeding 21 years at the best rent that can be reasonably obtained without fine and by which the lessee is not exempted from punishment for waste⁷. Such a lease may be made without notice⁸, and notwithstanding that there are no such trustees of the settlement⁹.

The notice must be given by posting registered letters or the recorded delivery service addressed to the trustees severally, and to the solicitor for the trustees, if any such solicitor is known to the tenant for life or statutory owner, and posted not less than one month before the making or granting of the sale, exchange, lease, mortgage, charge or option, or of a contract for the same¹⁰.

The notice is not a mere formality, as, if the tenant for life attempted to commit a fraud, for example by proposing to sell the property for something very much below its real value, the trustees can apply for an injunction¹¹. A notice will not be valid unless at its date the trustee is a trust corporation or the number of the trustees is not less than two¹². Consequently, unless one or other of those conditions is fulfilled, a tenant for life may be restrained from exercising any of the powers mentioned until trustees have been appointed¹³, and, if the sanction of the court is required to such exercise, an application for leave will be ordered to stand over until trustees have been appointed¹⁴. Any trustee, by writing under his hand, may waive notice, either in any particular case or generally, and may accept less than one month's notice¹⁵.

On request by a trustee of the settlement, a tenant for life or statutory owner must also furnish to him such particulars and information as may reasonably be required by him from time to time with reference to sales, exchanges or leases effected, or in progress, or immediately intended¹⁶.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'statutory owner' see PARA 766 note 6 ante.

3 For the meaning of 'lease' see PARA 685 note 13 ante.

4 A distinction is drawn between the making of the sale, exchange, lease, mortgage or charge, and the making of the contract; if the notice is given before either one of these two things it is good, and it is no objection that the notice given did not expire until after the contract became binding between the parties: see *Duke of Marlborough v Sartoris*(1886) 32 ChD 616. As to the giving of notice by the receiver for a tenant for life who is suffering from mental disorder see MENTAL HEALTH vol 30(2) (Reissue) PARA 701.

5 In the case of a mortgage or charge the notice should specify the particular transaction intended: see *Re Ray's Settled Estates*(1884) 25 ChD 464.

6 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

7 See the Settled Land Act 1925 ss 42(5)(i)(a), 101(1)(a), (2). As to waste see PARA 986 et seq post.

8 Ibid s 42(5)(i)(a).

9 Ibid s 42(5)(i)(b).

10 See *ibid* s 101(1); and the Recorded Delivery Service Act 1962 s 1(1) (see POST OFFICE).

11 See *Wheelwright v Walker*(1883) 23 ChD 752 at 762 (where it was stated that the trustees would be under a duty to apply for an injunction); *Re Lord Monson's Settled Estates*[1898] 1 Ch 427 at 432. However, the Settled Land Act 1925 s 97 (see PARA 891 post), relieves them from liability for not taking proceedings: see *England v Public Trustee* (1967) 205 Estates Gazette 651, CA, where the trustee was under no liability for not taking proceedings to prevent a bona fide, but improvident, sale.

12 Settled Land Act 1925 s 101(1) proviso. For the meaning of 'trust corporation' see PARA 705 note 6 ante.

13 See *Wheelwright v Walker*(1883) 23 ChD 752; *Re Bentley, Wade v Wilson* (1885) 54 LJ Ch 782. See also CIVIL PROCEDURE vol 11 (2009) PARA 479.

14 *Re Taylor* (1883) 52 LJ Ch 728, CA.

15 Settled Land Act 1925 s 101(4).

16 Ibid s 101(3).

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784. Persons dealing with tenant for life.

A person dealing in good faith with the tenant for life¹ is not concerned to inquire respecting the giving to the trustees of notice of intention to exercise statutory powers². Default in giving notice to the trustees is not a defect in the title of the tenant for life³, nor is the non-existence of trustees⁴, unless the transaction involves the payment of capital money, which must be paid either to the trustees or into court at the option of the tenant for life⁵, and, since he can only exercise his option if there are trustees, the person paying the capital money is thus bound to ascertain that there are trustees to whom it could be paid⁶. However, a person dealing with the tenant for life, if he knows that there are no trustees, is probably justified in refusing to complete, even if no capital money has to be received by them⁷; and a purchaser who knows that there are no trustees cannot be compelled to pay his purchase money into court, but he would get a good title if he did so in ignorance of the non-existence of the trustees⁸. An agreement for a lease when the intending lessee knows that there are no trustees in existence is not binding on the remaindermen⁹.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 Settled Land Act 1925 s 101(5). The notice referred to in the text is that required under s 101 (see PARA 783 ante): see s 101(5). See further *Duke of Marlborough v Sartoris* (1886) 32 ChD 616 at 623; *Hatten v Russell* (1888) 38 ChD 334. As to the protection of purchasers see PARA 885 et seq post.

3 *Hatten v Russell* (1888) 38 ChD 334.

4 *Mogridge v Clapp* [1892] 3 Ch 382, CA.

5 See the Settled Land Act 1925 s 75(1); and PARA 804 post. As to capital money see PARA 795 post.

6 *Mogridge v Clapp* [1892] 3 Ch 382, CA.

7 *Mogridge v Clapp* [1892] 3 Ch 382 at 400, CA. Under the Settled Land Act 1925 s 110(4), where no capital money arises under a transaction, a disposition by a tenant for life or statutory owner, in favour of a purchaser of a legal estate, has effect under the Act notwithstanding that at the date of the transaction there are no trustees of the settlement (see PARA 888 post); but 'purchaser' means a purchaser in good faith for value, and includes a lessee, mortgagee, or other person who in good faith acquires an interest in settled land for value (see PARA 702 note 12 ante), so it would seem that a purchaser who knows that there are no trustees would not be able to claim that protection.

8 *Re Fisher and Grazebrook's Contract* [1898] 2 Ch 660.

9 *Hughes v Fanagan* (1891) 30 LR Ir 111, Ir CA.

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785. Effect of receipt or direction of trustees.

The receipt or direction in writing of or by the trustees of the settlement¹, or, where a sole trustee is a trust corporation², of or by that trustee, or of or by the personal representatives³ of the last surviving or continuing trustee, for or relating to any money⁴ or securities⁵ paid or transferred to or by the direction of the trustees, trustee or representatives, as the case may be, effectually discharges the payer or transferor from payment, and from being bound to see to the application or being answerable for any loss or misapplication of it, and, in the case of a mortgagee or other person advancing money, from being concerned to see that any money advanced by him is wanted for any purpose of the Settled Land Act 1925, or that no more than is wanted is raised⁶.

1 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

2 For the meaning of 'trust corporation' see PARA 705 note 6 ante.

3 For the meaning of 'personal representative' see PARA 697 note 6 ante.

4 As to the restriction on payment of capital money to a sole trustee see PARA 786 post.

5 For the meaning of 'securities' see PARA 693 note 1 ante.

6 Settled Land Act 1925 s 95.

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786. Restriction on payment of capital money to a sole trustee.

Notwithstanding anything in the Settled Land Act 1925, capital money arising under that Act¹ must not be paid² to fewer than two persons³ as trustees of a settlement⁴, unless the trustee is a trust corporation⁵. Trustees of a settlement must concur in a conveyance to receive or direct payment of capital money, since no one else can give a purchaser a good discharge⁶. Where the settlement comes to an end, however, a sole personal representative of a deceased tenant for life can give a good receipt⁷.

1 For the meaning of 'capital money arising under the Act' and as to powers in respect of capital money see PARA 795 et seq post.

2 Capital money must be paid to trustees or into court: see PARA 797 post.

3 As to the powers of surviving or continuing trustees see PARA 753 ante.

4 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

5 Settled Land Act 1925 s 94(1). For the meaning of 'trust corporation' see PARA 705 note 6 ante.

6 *Re Norton and Las Casas' Contract* [1909] 2 Ch 59 (payment must be made to or by the direction of the trustees or into court). As to the payment of capital money in accordance with an order of, or into, court see the Settled Land Act 1925 ss 18(2)(c), 75(1); and PARAS 712 ante, 804 post.

7 *Re Bridgett and Hayes' Contract* [1928] Ch 163.

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B. LEAVE OF THE COURT OR CONSENT OF TRUSTEES

787. Where leave of the court is required.

The leave of the court¹ is required to the exercise of the statutory powers in the following cases:

- 104 (1) if it is desired to vary the statutory terms or conditions of a building or mining lease²;
- 105 (2) on a sale or purchase of personal chattels settled to devolve with land³;
- 106 (3) on a grant or lease for the purpose of the erection of dwellings for the working classes⁴, or the provision of gardens to be held with them, or for the purpose of the Small Holdings and Allotments Acts 1908 to 1931⁵, of any part of the settled land exceeding two acres in the case of land situate in a district, or ten acres in the case of land situate in a parish, in any one parish if the full consideration is not paid or reserved in respect of the excess⁶;
- 107 (4) on the investment or application of capital money in the purchase of any leasehold interest where the immediate reversion is settled land⁷;
- 108 (5) on the execution of a deed confirming past transactions⁸; and
- 109 (6) if it is desired to effect a transaction affecting or concerning the settled land or any other land which is not authorised⁹.

1 As to the court see PARA 792 post.

2 See the Settled Land Act 1925 s 46; and PARA 844 post.

3 See *ibid* s 67(3); and PARA 941 post.

4 As to the phrase 'working classes' see PARA 775 note 8 ante.

5 As to these Acts and the Acts amending them see AGRICULTURAL LAND vol 1 (2008) PARA 510 et seq.

6 See the Settled Land Act 1925 s 57(2); the Local Government Act 1972 ss 1(9), 179(3); and PARAS 831, 841 post.

7 See the Settled Land Act 1925 s 73(1)(xiv); and PARA 808 head (12) post.

8 See the Law of Property Act 1925 s 66 (as amended); and PARA 876 post.

9 See the Settled Land Act 1925 s 64 (as amended); and PARA 671 ante.

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788. When consent of the trustees is required.

The written consent of the trustees of the settlement¹ is required:

- 110 (1) if the tenant for life² desires to compromise, compound, abandon, submit to arbitration or otherwise settle any claim, dispute or question relating to the settled land³ or any part of it, including in particular claims, disputes or questions as to boundaries, the ownership of mines and minerals⁴, rights and powers of working mines and minerals, local laws and customs relative to the working of mines and minerals and other matters, easements and restrictive covenants, and whether or not any consideration in money or otherwise is given or taken⁵; and
- 111 (2) if the tenant for life desires or agrees to release, waive or modify any covenant, agreement or restriction imposed on any other land for the benefit of the settled land, or any part of it, or release or agree to release any other land from any easement, right or privilege, including a right of pre-emption, affecting that land for the benefit of the settled land or any part of it, and whether with or without consideration in money or otherwise⁶.

1 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 For the meaning of 'mines and minerals' see PARA 680 note 1 ante. As to mines and minerals generally see MINES, MINERALS AND QUARRIES.

5 See the Settled Land Act 1925 s 58(1) (as amended); and PARA 872 post. As to easements and restrictive covenants see EASEMENTS AND PROFITS A PRENDRE; EQUITY vol 16(2) (Reissue) PARA 616 et seq.

6 See ibid s 58(2); and PARA 873 post. A tenant for life may contract that a transaction which is affected by the Railways Clauses Consolidation Act 1845 s 78 (whether subject or not to any variation by the Mines (Working Facilities and Support) Act 1923) or the Waterworks Clauses Act 1847 s 22 takes effect as if some other distance than 40 yards or the prescribed distance had been mentioned: see the Settled Land Act 1925 s 58(3); and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 151. As to rights of pre-emption see SALE OF LAND vol 42 (Reissue) PARA 28.

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789. When consent of trustees or court order is required.

The consent of the trustees of the settlement¹ or a court order², is required:

- 112 (1) to the cutting and sale of timber by a tenant for life³ impeachable for waste⁴; and
- 113 (2) to the exercise of the statutory powers of disposing of settled land⁵ as respects the principal mansion house⁶, if any, on any settled land, and the pleasure grounds and park⁷ and lands, if any, usually occupied with it⁸, where the settlement is made or comes into operation before 1926, if the settlement did not expressly provide to the contrary⁹, and where the settlement is made or comes into operation after 1925, if the settlement expressly provides that those powers or any of them are not to be exercised without such consent or order¹⁰. For this purpose, the court may at any time say whether or not a particular house is the principal mansion house, and, having regard to the state of facts existing at the date of the application to it, may come to the conclusion that a house which was formerly a principal mansion house has ceased to be such¹¹. If two estates are settled by the same settlement, with a mansion house on each, there may be two principal mansion houses on the settled land¹².

1 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

2 As to the court see PARAS 792-793 post.

3 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

4 See the Settled Land Act 1925 s 66; and PARA 848 post. As to waste see PARA 986 et seq post.

5 For the meaning of 'dispose of' see PARA 685 note 14 ante. For the meaning of 'settled land' see PARA 680 text to note 2 ante.

6 Where a house is usually occupied as a farmhouse, or where the site of any house and the pleasure grounds and park and land, if any, usually occupied with it do not together exceed 25 acres in extent, the house is not to be deemed a principal mansion house for this purpose and may accordingly be disposed of in like manner as any other part of the settled land: Settled Land Act 1925 s 65(2).

7 The word 'park' is not used in the sense of an ancient legal park, but according to its ordinary meaning in common parlance: see *Pease v Courtney* [1904] 2 Ch 503.

8 Settled Land Act 1925 s 65(1). The words 'usually occupied therewith' apply merely to the words 'lands, if any', immediately preceding them, so that a park not usually occupied with the principal mansion house may be within this restriction: see *Pease v Courtney* [1904] 2 Ch 503. See, however, *Lord Bruce v Marquess of Ailesbury* [1892] AC 356 at 360, HL.

9 See the Settled Land Act 1925 s 65(1) proviso (a).

10 Ibid s 65(1) proviso (b). As to consents to dispositions to the National Trust see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 993. It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.

11 See *Re Wythes' Settled Estates* [1908] 1 Ch 593; *Re Feversham Settled Estates* [1938] 2 All ER 210.

12 See *Gilbey v Rush* [1906] 1 Ch 11.

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790. How consent of the trustees is given.

The consent of the trustees¹ must be the consent of all the trustees, given at the time and with reference to the particular transaction proposed, but it need not be in writing, and it is immaterial whether it is expressed orally or otherwise to the parties. Provided that it is given to the actual transaction proposed, it makes no difference that it was given in the belief that the house affected was not the principal mansion house².

1 Ie the consent of the trustees to disposal of the mansion house: see PARA 789 ante.

2 *Gilbey v Rush* [1906] 1 Ch 11.

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791. Principles on which the court acts.

In sanctioning a sale of the principal mansion house¹, the court is bound to consider the interests of the persons entitled under the settlement, but in the Settled Land Act 1925 the paramount object of the legislature is the well-being of the settled land, and the public interests, in the sense of the interests of those who live upon the soil, ought to outweigh all considerations of sentimental interest in the family². The facts that the estate is not an old family estate and that the settlor has directed a sale on the death of the tenant for life may make the court readier to consent to a sale³, but, on the other hand, the consent is not refused merely because the settlor in creating the settlement has annexed a qualification that the mansion house is not to be sold⁴, or a condition as to residence⁵. However, if the tenant for life has mortgaged his life interest to its full value, the court declines to make an order to sanction a sale without the consent of the mortgagee being obtained to it, and without full information as to the proposed sale⁶.

The same principles apply to the exercise of the statutory power of leasing the principal mansion house, and the pleasure grounds and park and land usually occupied with it, the consent of the trustees or of the court being required to any exercise of such power, and a condition as to residence is inoperative to prevent such exercise⁷.

1 See PARA 789 ante.

2 See *Re Marquis of Ailesbury's Settled Estates* [1892] 1 Ch 506, CA; affd sub nom *Lord Bruce v Marquess of Ailesbury* [1892] AC 356, HL.

3 See *Re Wortham's Settled Estates* (1896) 75 LT 293.

4 See *Re Brown's Will* (1884) 27 ChD 179 (where the court declined to grant leave without a direction as to what was to be done with chattels settled to devolve with the house). As to sanctioning a sale of settled chattels see PARA 942 post.

5 See *Re Paget's Settled Estates* (1885) 30 ChD 161; and PARA 782 ante.

6 See *Re Sebright's Settled Estates* (1886) 33 ChD 429 at 442, CA. See also MORTGAGE vol 77 (2010) PARA 101 et seq.

7 See *Re Thompson's Will* (1888) 21 LR Ir 109.

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C. APPLICATIONS TO THE COURT

792. Jurisdiction and procedure.

All matters within the jurisdiction of the court under the Settled Land Act 1925 are, subject to the enactments for the time being in force with respect to the procedure of the Supreme Court of Judicature, assigned to the Chancery Division of the High Court¹.

The powers of the court may, as regards land² not exceeding in capital value the county court limit³, or in net annual value for rating the county court limit⁴, and, as regards capital money arising under the Settled Land Act 1925⁵, and securities⁶ in which the same is invested, not exceeding in amount or value the county court limit, and as regards personal chattels settled or to be settled in accordance with that Act⁷, not exceeding the county court limit, be exercised by any county court⁸. The jurisdiction of the county court can, however, be extended by the consent of the parties⁹, and the High Court has power to transfer proceedings to the county court even if the limits set out above are exceeded¹⁰.

1 Settled Land Act 1925 s 113(1). As to the Supreme Court of Judicature see COURTS. Payment of money into court effectually exonerates from payment the person making the payment: s 113(4). As to applications to the court see s 113(5); RSC Ord 5 r 3; CCR Ord 3 r 4; and, as from 26 April 1999, CPR Pts 7, 8. See further CIVIL PROCEDURE. On any application notice must be served on such persons, if any, as the court thinks fit, and on an application by the trustees of a settlement notice must be served in the first instance on the tenant for life: see the Settled Land Act 1925 s 113(6), (7). For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante; and for the meaning of 'tenant for life' see PARA 671 note 5 ante.

The court has full power and discretion to make such order as it thinks fit respecting the costs, charges, or expenses of all or any of the parties to any application, and may, if it thinks fit, order that all or any of those costs, charges, or expenses be paid out of property subject to the settlement: s 113(8). For the meaning of 'property' see PARA 778 note 7 ante; and for the meaning of 'settlement' see PARA 678 note 1 ante. Costs have been allowed where the application was unsuccessful (*Re Horne's Settled Estate*(1888) 39 ChD 84, CA), and, on the other hand, the costs of a successful application have been ordered to be paid by the tenant for life (*Re Bagot's Settlement, Bagot v Kittoe*[1894] 1 Ch 177). Where trustees are the applicants the ordinary rule as to their costs is followed: see TRUSTS vol 48 (2007 Reissue) PARA 906 et seq. Where trustees concurred in an application as to improvements without appearing separately, the court declined to allow their costs out of the estate: see *Re Broadwater Estate* (1885) 54 LJ Ch 1104, CA. Where trustees acted reasonably in taking different views, they were allowed separate costs: see *Re Marquis of Ailesbury's Settled Estates*[1892] 1 Ch 506 at 548, CA. As to costs see generally RSC Ord 62; as from 26 April 1999, CPR Pts 43-48; and CIVIL PROCEDURE.

2 For the meaning of 'land' see PARA 680 note 1 ante.

3 For these purposes, 'the county court limit' means the county court limit for the time being specified by an Order in Council under the County Courts Act 1984 s 145 (see COURTS) as the county court limit for the purposes of the Settled Land Act 1925 s 113(3) (as substituted): s 113(3A) (added by the Administration of Justice Act 1982 s 37, Sch 3 Pt II para 4; and amended by the County Courts Act 1984 s 148(1), Sch 2 Pt V para 20). As to the county court limit see COURTS.

4 Rates and rateable values were abolished by the Local Government Finance Act 1988: see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 2. However, references in the Settled Land Act 1925 s 113 (as amended) to net annual value for rating or rateable value are to be construed as references to a sum equivalent to the last such value of the property concerned immediately before 1 April 1990, or, if it did not have one, to the rateable value of the hereditament of which it is, or was, part or failing that, the value by the year which the land has at the commencement of proceedings: see the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990, SI 1990/776, art 4.

5 As to such capital money see PARA 795 et seq post.

- 6 For the meaning of 'securities' see PARA 693 note 1 ante.
- 7 It is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante.
- 8 Ibid s 113(3) (substituted by the County Courts Act 1984 Sch 2 Pt V para 20). As to payment or transfer of money, securities or proceeds of sale being paid or transferred into the court see PARA 798 note 8 post.
- 9 See the County Courts Act 1984 s 24 (as amended); and COURTS.
- 10 See ibid s 40 (as substituted); and CIVIL PROCEDURE. As to the power of the Lord Chancellor to make orders allocating business between the High Court and county courts see the Courts and Legal Services Act 1990 s 1; and CIVIL PROCEDURE; COURTS.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(ii) Preliminaries to exercise of Statutory Powers/C. APPLICATIONS TO THE COURT/793. Reference of questions to the court.

793. Reference of questions to the court.

If a question arises or a doubt is entertained:

- 114 (1) respecting the exercise or intended exercise of any of the powers conferred by the Settled Land Act 1925, or any enactment replaced by that Act¹, or the settlement², or any matter relating to it³;
- 115 (2) as to the person in whose favour a vesting deed or assent⁴ ought to be executed, or as to its contents⁵; or
- 116 (3) otherwise in relation to property⁶ subject to a settlement⁷,

the tenant for life⁸ or statutory owner⁹, or the trustees of the settlement¹⁰, or any other person interested under the settlement, may apply to the court for its decision or directions on it, or for the court's sanction to any conditional contract, and the court may make such order or give such directions respecting the matter as it thinks fit¹¹. In the absence of bad faith, the court will not order a sale under this power where two persons who jointly constitute the tenant for life disagree as to whether the property should be sold¹².

1 Le the Settled Land Acts 1882 to 1890: see PARA 678 note 1 ante.

2 For the meaning of 'settlement' see PARA 678 note 1 ante.

3 Settled Land Act 1925 s 93(a).

4 For the meaning of 'vesting deed' see PARA 688 note 6 ante; and for the meaning of 'vesting assent' see PARA 690 note 8 ante.

5 Settled Land Act 1925 s 93(b).

6 For the meaning of 'property' see PARA 778 note 7 ante.

7 Settled Land Act 1925 s 93(c).

8 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

9 For the meaning of 'statutory owner' see PARA 766 note 6 ante.

10 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

11 Settled Land Act 1925 s 93. In addition to this provision which gives the court a general jurisdiction, the Settled Land Act 1925 also confers on the court jurisdiction to determine a considerable number of specific matters. The various provisions of the Act conferring such jurisdiction are set out in the text in conjunction with the matters to which they relate.

12 *Re 90, Thornhill Road, Tolworth, Surrey, Barker v Addiscott* [1970] Ch 261, [1969] 3 All ER 685.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iii) Power to effect Improvements/794. Powers as regards improvements.

(iii) Power to effect Improvements

794. Powers as regards improvements.

The tenant for life¹ and each of his successors in title having under the trust instrument² a limited estate or interest in the settled land³, and all persons employed by or under contract with him or them, may from time to time enter on the settled land and, without impeachment of waste by any remainderman or reversioner, execute on it any improvement authorised by the Settled Land Act 1925⁴, or inspect, maintain and repair it⁵. For these purposes such persons may do, make and use on the settled land all proper acts, works and conveniences, and may get and work freestone, limestone, clay, sand and other substances, make tramways and other ways, burn and make bricks, tiles and other things, and cut down and use timber and other trees not planted or left standing for shelter or ornament⁶.

A tenant for life may enter into a contract for or relating to the execution of any improvement authorised by the Settled Land Act 1925, and may vary or rescind it⁷. He may also join or concur with any other person interested in executing, or contributing to the costs of, any improvement authorised by the Settled Land Act 1925⁸.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante. As to the exercise of the powers of a tenant for life by statutory owners see PARA 766 ante.

2 For the meaning of 'trust instrument' see PARA 688 note 7 ante.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 As to these improvements see PARA 815 et seq post. As to impeachment for waste see PARA 986 et seq post.

5 Settled Land Act 1925 s 89.

6 Ibid s 89. As to cutting timber see further PARA 848 et seq post.

7 Ibid s 90(1)(v). As to such contracts see further PARAS 869-870 post.

8 Ibid s 86. This includes the investment of capital money in a water company formed to supply water to a building estate: see *Re Orwell Park Estate* (1894) 8 R 521.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/795. Meaning of 'capital money arising under the Act'.

(iv) Powers in respect of Capital Money

795. Meaning of 'capital money arising under the Act'.

'Capital money arising under the Settled Land Act 1925' means capital money arising under the powers and provisions of that Act, or the Acts replaced by it¹, and receivable for the trusts and purposes of the settlement², and includes securities³ representing capital money⁴. Capital money may arise either by reason of the exercise of the statutory powers⁵ or by virtue of other statutory provisions⁶.

1 Le the Settled Land Acts 1882 to 1890: see PARA 678 note 1 ante.

2 For the meaning of 'settlement' see PARA 678 note 1 ante.

3 For the meaning of 'securities' see PARA 693 note 1 ante.

4 Settled Land Act 1925 s 117(1)(ii).

5 See eg para 920 post (sale of investments); para 921 et seq post (sale of land); para 778 note 7 ante (grant of lease subject to fine); para 843 post (lease of mines); para 848 post (sale of timber); para 941 post (sale of heirlooms); and PARA 849 post (sums raised by mortgage). As to money arising on the exercise of a number of the powers grouped in the Settled Land Act 1925 under the heading 'Miscellaneous Powers' see PARA 856 et seq post.

6 Compensation payable under the Land Compensation Act 1973 Pt I (ss 1-19) (as amended), for injury to the value of settled land (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 883 et seq) is treated as capital money arising under the Settled Land Act 1925: see the Land Compensation Act 1973 s 10(3); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 898. An advance payment on account of compensation payable for a compulsory purchase of settled land is also treated as such capital money: see s 52(7); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 652. See also PARAS 796-797 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/796. Money liable under settlement to be laid out in purchase of land.

796. Money liable under settlement to be laid out in purchase of land.

Where (1) under any instrument¹, whenever it came into operation, money is in the hands of trustees, including money in court², and is liable³ to be laid out in the purchase of land⁴ to be made subject to the trusts declared by that instrument⁵; or (2) under any instrument which came into operation after 1925, money or securities⁶ or the proceeds of sale of any property⁷ is or are held by trustees on trusts creating entailed interests in it⁸, then, in addition to such powers of dealing with them as the trustees have independently of the Settled Land Act 1925, they may, at the option of the tenant for life⁹, invest or apply the money, securities or proceeds as if they were capital money arising under that Act¹⁰.

On the principle that the erection of a building is substantially the same thing as the purchase of land¹¹, money liable to be laid out in the purchase of land, independently of the above power to invest or apply the money as if it were capital money arising under that Act, may be applied in the erection of new buildings on settled land or in rebuilding houses which are in a ruinous state (if the rebuilding would be beneficial to the estate) either on the land settled or on the land to be purchased¹², although not under this principle in improvements¹³ or repairs of existing buildings or in reinstating a mansion house destroyed by fire¹⁴.

Money liable to be laid out in the purchase of land to be made subject to the settlement includes money bequeathed to trustees on trust to be laid out in land in strict settlement¹⁵, the proceeds of sale of settled land directed by a court order to be invested in consols pending the purchase of other hereditaments to be settled in the same manner as the land that was sold¹⁶, money the investment of which in land is deferred¹⁷, a sinking fund to replace a sum raised by mortgage for the purposes of improvements on settled estates¹⁸, and money subject to a disposition under which it may be, although it is not bound to be, laid out in the purchase of land¹⁹, or of some particular parcel of land²⁰, or of freehold ground rents²¹.

1 For the meaning of 'instrument' see PARA 688 note 7 ante.

2 See *Clarke v Thornton* (1887) 35 ChD 307 at 314. The Settled Land Act 1925 s 77 does not expressly refer to money in court.

3 This includes a mere power: see *Re Hill, Hill v Pilcher* [1896] 1 Ch 962.

4 For the meaning of 'land' see PARA 680 note 1 ante.

5 Settled Land Act 1925 s 77(a). As to the proceeds of investments sold see PARA 826 post.

6 For the meaning of 'securities' see PARA 693 note 1 ante.

7 For the meaning of 'property' see PARA 778 note 7 ante.

8 Settled Land Act 1925 s 77(b). For the meaning of 'entailed interest' see PARA 678 note 11 ante. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

9 See *Re Gee, Pearson Gee v Pearson* (1895) 64 LJ Ch 606. For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

10 Settled Land Act 1925 s 77. For the meaning of 'capital money arising under the Act' see PARA 795 ante. As to modes of application of capital money see PARA 808 post.

11 *Re Newman's Settled Estates* (1874) 9 Ch App 681 at 683 per James LJ; *Vine v Raleigh* [1891] 2 Ch 13, CA.

12 *Re Lord Hotham's Trusts* (1871) LR 12 Eq 76; *Lord Cowley v Wellesley* (1877) 46 LJ Ch 869; *Re Blake's Settled Estates* [1923] 2 Ch 128.

13 Capital money may be applied on improvements independently of this principle if the improvements are authorised under the Settled Land Act 1925: see the text to notes 1-10 supra; and PARA 808 et seq post.

14 See *Re Leigh's Estate* (1871) 6 Ch App 887; *Brunskill v Caird* (1873) LR 16 Eq 493; *Re Newman's Settled Estates* (1874) 9 Ch App 681; *Drake v Trefusis* (1875) 10 Ch App 364. This last-mentioned case has been consistently followed: see *Re Venour's Settled Estates*, *Venour v Sellon* (1876) 2 ChD 522; *Re Speer's Trusts* (1876) 3 ChD 262; *Donaldson v Donaldson* (1876) 3 ChD 743; *Jesse v Lloyd* (1883) 48 LT 656; *Conway v Fenton* (1888) 40 ChD 512 at 515 per Kekewich J; *Vine v Raleigh* [1891] 2 Ch 13, CA. If any cases (eg *Re Johnson's Settlements* (1869) LR 8 Eq 348; *Earl Poulett v Somerset* (1871) 25 LT 56; *Re Leadbitter* (1882) 30 WR 378) are inconsistent with the principles laid down in *Re Newman's Settled Estates* supra they cannot now be treated as having authority.

15 *Re Mackenzie's Trusts* (1883) 23 ChD 750. See further note 16 infra.

16 *Re Tennant* (1889) 40 ChD 594. This case and *Re Mackenzie's Trusts* (1883) 23 ChD 750 (see note 15 supra) proceeded on the ground that, if the investment had been made, the land purchased could have been sold and the proceeds invested under the Settled Land Acts. Both these decisions were approved in *Re Mundy's Settled Estates* [1891] 1 Ch 399, CA.

17 *Re Maberly, Maberly v Maberly* (1886) 33 ChD 455. See, however, *Burke v Gore* (1884) 13 LR Ir 367.

18 *Re Sudbury and Poynton Estates, Vernon v Vernon* [1893] 3 Ch 74. As to improvements see PARA 809 et seq post.

19 *Re Soltau's Trust* [1898] 2 Ch 629.

20 *Re Hill, Hill v Pilcher* [1896] 1 Ch 962.

21 *Re Thomas, Weatherall v Thomas* [1900] 1 Ch 319 at 323.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/797. Money in court liable under statute to be laid out in purchase of land.

797. Money in court liable under statute to be laid out in purchase of land.

Where under an Act, or an order or scheme confirmed by or having the force of an Act of Parliament, incorporating or applying, wholly or in part, the Lands Clauses Acts¹, or under any Act, public general, or local or private, money is in court and is liable to be laid out in the purchase of land² to be made subject to a settlement³, then, in addition to any mode of dealing with it authorised by the statute under which the money is in court, that money may be invested or applied as capital money arising under the Settled Land Act 1925⁴ on the like terms, if any, respecting costs⁵ and other things, as nearly as circumstances admit, and notwithstanding anything in that Act, according to the same procedure, as if the modes of investment or application authorised by the Act were authorised by the statute under which the money is in court⁶. Such money may be paid out to the trustees of the settlement at the request of the tenant for life⁷. Reason must be shown for supposing that the payment will be to the advantage of the settlement. There is no jurisdiction to impose as a condition of such payment out that the trustees are to give notice to the remainderman of all proposed investments or other applications of the money, although it may be right that they should give such notice⁸.

1 As to these Acts see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509 et seq.

2 For the meaning of 'land' see PARA 680 note 1 ante.

3 This includes the purchase money on a compulsory purchase of land belonging to a charity absolutely (see *Re Byron's Charity* (1883) 23 ChD 171; *Re Bethlehem and Bridewell Hospitals* (1885) 30 ChD 541), of glebe land (see *Ex p Vicar of Castle Bytham, ex p Midland Rly Co* [1895] 1 Ch 348), and of land belonging to a local authority (see *Ex p City of London Corpn, ex p West Ham Corpn* (1901) 17 TLR 232). For the meaning of 'settlement' see PARA 678 note 1 ante.

4 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

5 As to costs where land is compulsorily acquired see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 659-660.

6 Settled Land Act 1925 s 76. See also COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 674.

7 *Re Wright's Trusts* (1883) 24 ChD 662; *Re Harrop's Trusts* (1883) 24 ChD 717; *Re Duke of Rutland's Settlement* (1883) 49 LT 196; *Re Rathmines etc Drainage Act, ex p Verschoyle* (1885) 15 LR Ir 576; *Re Wootton's Estate* [1890] WN 158; *Re Belfast Improvement Acts, ex p Reid* [1898] 1 IR 1.

8 *Re Bolton Estates Act 1863* (1885) 52 LT 728.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/798. Personality settled on trusts of capital money.

798. Personality settled on trusts of capital money.

Where money or securities¹ or the proceeds of sale of any property² is or are by any instrument³, whenever it came into operation, directed to be held on trusts declared by reference to capital money arising under the Settled Land Act 1925⁴ from land⁵ settled by that instrument or any other instrument, the money, securities or proceeds are to be held on the like trusts as if they had been or represented money which had actually arisen under that Act from the settled land⁶.

The money, securities or proceeds of sale must be paid or transferred to the trustees of the settlement⁷ of the settled land, or paid or transferred into court⁸, and invested or applied accordingly⁹. Where the settled land includes freehold land, the money, securities or proceeds of sale must be held on the like trusts as if they had been or represented capital money arising from the freehold land¹⁰. This provision has effect notwithstanding any direction in the instrument creating the trust that the trust property is not to vest absolutely in any tenant in tail¹¹ or in tail male or in tail female under the limitations¹² of the settled land who dies under a specified age, or before the happening of a specified event, but otherwise has effect with any variations and subject to any contrary intention expressed in the instrument creating the trust¹³.

1 For the meaning of 'securities' see PARA 693 note 1 ante.

2 For the meaning of 'property' see PARA 778 note 7 ante.

3 For the meaning of 'instrument' see PARA 688 note 7 ante.

4 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

5 For the meaning of 'land' see PARA 680 note 1 ante.

6 Settled Land Act 1925 s 78(1). This is without prejudice to the rights of any person claiming under a disposition for valuable consideration of any such money, securities or proceeds made before 1926: s 78(1) (amended by the Law of Property (Amendment) Act 1926 s 7, Schedule). For the meaning of 'disposition' see PARA 685 note 14 ante. Before 1926 personality could be converted into realty only by imposing an imperative trust to invest in land: *Re Walker, Macintosh-Walker v Walker* [1908] 2 Ch 705; *Re Twopeny's Settlement, Monroe v Twopeny* [1924] 1 Ch 522, CA. For the meaning of 'settled land' see PARA 680 text to note 2 ante.

7 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

8 As to the court see PARA 792 ante. Any reference in the Settled Land Act 1925 to money, securities or proceeds of sale being paid or transferred into court is to be construed as referring to the money, securities or proceeds being paid or transferred into the Supreme Court or any other court that has jurisdiction, and any reference in that Act to the court, in a context referring to the investment or application of money, securities or proceeds of sale paid or transferred into court, is to be construed, in the case of money, securities or proceeds paid or transferred into the Supreme Court, as referring to the High Court, and, in the case of money, securities or proceeds paid or transferred into another court, as referring to that other court: s 117(1A) (added by the Administration of Justice Act 1965 s 17(1), Sch 1).

9 See the Settled Land Act 1925 s 78(3).

10 Ibid s 78(4).

11 For the meaning of 'tenant in tail' see PARA 762 note 8 ante.

12 For the meaning of 'limitation' see PARA 708 note 4 ante. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

13 Settled Land Act 1925 s 78(5). As to the effect of such a direction see PARA 938 note 8 post.

UPDATE

798 Personality settled on trusts of capital money

NOTE 8--For 'Supreme Court' in both places substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 4 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/799. Personality settled together with land.

799. Personality settled together with land.

Where money or securities¹ or the proceeds of sale of any property² is or are by any instrument³ coming into operation after 1925 directed to be held on the same trusts as, or on trusts corresponding as nearly as may be with the limitations⁴ of land⁵ settled by that instrument or any other instrument, the money, securities or proceeds are to be held on the like trusts as if they had been or represented capital money arising under the Act from the settled land⁶. The money, securities or proceeds of sale must be paid or transferred and held on trust, and the trust instrument has the same effect, as in the foregoing case of personality settled on trusts of capital money⁷.

1 For the meaning of 'securities' see PARA 693 note 1 ante.

2 For the meaning of 'property' see PARA 778 note 7 ante.

3 For the meaning of 'instrument' see PARA 688 note 7 ante.

4 For the meaning of 'limitation' see PARA 708 note 4 ante.

5 For the meaning of 'land' see PARA 680 note 1 ante.

6 Settled Land Act 1925 s 78(2). For the meaning of 'capital money arising under the Act' see PARA 795 ante. For the meaning of 'settled land' see PARA 680 text to note 2 ante.

7 See *ibid* s 78(3)-(5); and PARA 798 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/800. Capital money arising otherwise than under the Act.

800. Capital money arising otherwise than under the Act.

Any money arising after 1925 from settled land¹ otherwise than under the Settled Land Act 1925², as well as any money or securities³ in the names or under the control of the tenant for life⁴ or the trustees of the settlement⁵, being or representing money which had arisen before 1926 from the settled land otherwise than under the Settled Land Acts 1882 to 1890⁶, and which, as between the persons interested in the settled land, ought to be or to have been treated as capital⁷, is (without prejudice to any other statutory provisions affecting the same) deemed to be or to represent capital money arising under the Settled Land Act 1925⁸, and must be paid or transferred to or retained by the trustees of the settlement, or paid or transferred into court⁹, and invested or applied accordingly¹⁰.

1 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

2 The purposes authorised for the application of capital money by the Settled Land Act 1925 s 73 include the payment of any sum recoverable as compensation where planning permission is revoked or modified under the Town and Country Planning Act 1990 (see ss 111, 112) (both as amended) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARAS 918-919): see s 328 (as amended); and TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 918.

3 For the meaning of 'securities' see PARA 693 note 1 ante.

4 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

5 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

6 As to these Acts see PARA 678 note 1 ante.

7 As to cases in which money arising otherwise than under the Settled Land Act 1925 has been held to be capital see PARA 944 note 5 post.

8 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

9 As to the court see PARA 792 ante. As to money paid or transferred into court see PARA 798 note 8 ante.

10 Settled Land Act 1925 s 81. Section 81 does not give the court a discretion unfettered by previous authority to decide what in fact is capital money: *Re Pomfret's Settlement, Guest v Pomfret* [1952] Ch 48, [1951] 2 All ER 951.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/801. Damages for breach of lessee's covenants.

801. Damages for breach of lessee's covenants.

Money, not being rent¹, received after 1925 by way of damages or compensation for breach of any covenant by a lessee or grantee contained in any lease² or grant of settled land³ (whenever the lease or grant was made and whether under the statutory powers or not), unless in any case the court⁴ on the application of the tenant for life or the trustees of the settlement⁵ otherwise directs, is deemed to be capital money arising under the Act⁶, and must be paid to or retained by the trustees of the settlement, or paid into court, and invested or applied accordingly⁷. This provision: (1) does not apply to money received by way of damages or compensation for the breach of a covenant to repay to the lessor or grantor money laid out or expended by him, or to any case in which, if the money received were applied in making good the breach of covenant or its consequences, such application would not enure for the benefit of the settled land, or any buildings on it⁸; and (2) applies only if and as far as a contrary intention is not expressed in the settlement⁹, and has effect subject to the terms of the settlement, and to any provisions contained in it, but a contrary intention is not to be deemed to be expressed merely by words negativing impeachment for waste¹⁰.

1 'Rent' includes yearly or other rent, and toll, duty, royalty, or other reservation, by the acre, or the ton, or otherwise; and, in relation to rent, 'payment' includes delivery; and 'fine' includes premium or fore-gift, and any payment, consideration, or benefit in the nature of a fine, premium or fore-gift: Settled Land Act 1925 s 117(1) (xxii).

2 For the meaning of 'lease' see PARA 685 note 13 ante.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 As to the court see PARA 792 ante.

5 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante. For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

6 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

7 Settled Land Act 1925 s 80(1), (5). As to the application of such money see also PARA 808 note 23 post. As to the payment of money into court see PARA 798 note 8 ante.

8 Ibid s 80(4).

9 For the meaning of 'settlement' see PARA 678 note 1 ante.

10 Settled Land Act 1925 s 80(6). As to impeachment for waste see PARA 986 et seq post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/802. Money received under insurance policy.

802. Money received under insurance policy.

Money receivable by trustees or any beneficiary under a policy of insurance against the loss or damage of any property subject to a settlement within the Settled Land Act 1925¹, whether by fire or otherwise, where the policy has been kept up under any trust in that behalf or under any power statutory or otherwise, or in performance of any covenant or of any obligation statutory or otherwise, or by a tenant for life impeachable for waste², is: (1) if the money was receivable in respect of settled land within that Act³, or any building or works on it, deemed to be capital money arising under that Act⁴ from the settled land, and must be invested or applied by the trustees, or, if in court, under the direction of the court, accordingly⁵; or (2) if it was receivable in respect of personal chattels settled as heirlooms within that Act⁶, deemed to be capital money arising under that Act, and is applicable by the trustees, or, if in court, under the direction of the court, in like manner as provided by that Act with respect to money arising by a sale of chattels settled as heirlooms⁷.

1 For the meaning of 'settlement' see PARA 678 note 1 ante.

2 See the Trustee Act 1925 s 20(1); and PARA 774 ante. As to liability for waste see PARA 986 et seq post.

3 For the meaning of 'settled land within the Settled Land Act 1925' see PARA 680 ante.

4 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

5 See the Trustee Act 1925 s 20(3)(a); and TRUSTS vol 48 (2007 Reissue) PARA 1048.

6 See PARA 937 et seq post.

7 See the Trustee Act 1925 s 20(3)(b); and TRUSTS vol 48 (2007 Reissue) PARA 1048. This provision extends to chattels within the Settled Land Act 1925 s 67(4): see PARA 943 post. As to the sale of settled chattels see PARAS 940-943 post. As to insurance money being capital see *Mumford Hotels Ltd v Wheler* [1964] Ch 117, [1963] 3 All ER 250.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/803. Commutation money for additional rent on conversion of perpetually renewable leaseholds.

803. Commutation money for additional rent on conversion of perpetually renewable leaseholds.

Money received for the commutation of any additional rent payable in respect of a perpetually renewable lease converted by the Law of Property Act 1922¹ into a long term, where the reversion is settled land, is treated as capital money².

1 See LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 541. See also PARA 978 post.

2 See the Law of Property Act 1922 s 145, Sch 15 para 17(3).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/804. Capital money to be paid to trustees or into court.

804. Capital money to be paid to trustees or into court.

In order that it may be invested or applied in an authorised manner¹, capital money arising under the Settled Land Act 1925² must be paid either to the trustees of the settlement³ or into court⁴, at the option of the tenant for life⁵, and must be invested or applied by the trustees, or under the direction of the court, as the case may be, accordingly⁶. This option may only be exercised if there are trustees for the purposes of that Act in existence at the time of payment⁷. Consequently a purchaser cannot be compelled to pay into court if there are no trustees in existence at the time of completion of the contract, although he might get a good title if he paid into court in ignorance of the fact that there were no trustees⁸.

1 As to the making of investments see PARAS 805-808 post.

2 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

3 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante. As to the restriction on the payment of capital money to a sole trustee see PARA 786 ante. See also SALE OF LAND vol 42 (Reissue) PARA 312.

4 As to the court see PARA 792 ante. As to the payment of money into court see PARA 798 note 8 ante.

5 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

6 Settled Land Act 1925 s 75(1). A purchaser should not pay purchase money to an incumbrancer by the direction of the tenant for life in order to pay off an incumbrance which is prior to the settlement, even where the purchase money is insufficient to discharge the incumbrance; he should pay it to or by the direction of the trustees: see *Re Norton and Las Casas' Contract* [1909] 2 Ch 59.

7 *Hatten v Russell* (1888) 38 ChD 334; *Mogridge v Clapp* [1892] 3 Ch 382, CA; *Re Fisher and Grazebrook's Contract* [1898] 2 Ch 660.

8 *Re Fisher and Grazebrook's Contract* [1898] 2 Ch 660. Cf *Hughes v Fanagan* (1891) 30 LR Ir 111, Ir CA. See further PARA 784 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/805. Investment or application by trustees.

805. Investment or application by trustees.

If the investment or other application is to be made by the trustees, it must be made according to the direction of the tenant for life¹. The trustees are bound to see that the proposed application is for an authorised object, and they are entitled to be satisfied that the direction is given on proper professional advice², but, so long as the tenant for life really and honestly exercises his discretion, he cannot be controlled by the trustees or by the court³. However, the court may interfere to prevent a tenant for life, who in these matters is in the same position as a trustee, from investing in a security which is not suitable, even if it is within the words of the power⁴.

In default of any direction by the tenant for life, the investment or other application must be made according to the discretion of the trustees, subject to any consent required or direction given by the settlement with respect to the investment or other application by the trustees of trust money of the settlement⁵. All investments must be in the names or under the control of the trustees⁶.

During the subsistence of the beneficial interest of the tenant for life, an investment, or other application, of capital money may not be altered without his consent⁷.

1 Settled Land Act 1925 s 75(2). For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante. In giving such a direction, as in exercising any of the statutory powers, the tenant for life is acting as a trustee: see *Re Hunt's Settled Estates, Bulteel v Lawdeshayne* [1905] 2 Ch 418 (on appeal [1906] 2 Ch 11, CA); *Re Peel's Settled Estates* [1910] 1 Ch 389; *Re Gladwin's Trust* [1919] 1 Ch 232; *Re Cowley Settled Estates* [1926] Ch 725; *Re Boston's Will Trusts, Inglis v Boston* [1956] Ch 395, [1956] 1 All ER 593. See also PARA 775 ante.

2 See *Re Lord Coleridge's Settlement* [1895] 2 Ch 704; *Re Hotham, Hotham v Doughty* [1902] 2 Ch 575, CA. If the order of the Court of Appeal in the latter case is to be taken as laying down a principle of law, it seems to follow that the tenant for life can consult his own brokers as to proposed investments, and that the trustees, on being satisfied that he has been properly advised, can safely pay the money to his brokers for investment, and are not entitled to employ their own brokers, contrary to *Re Duke of Cleveland's Settled Estates* [1902] 2 Ch 350, which followed *Re Hotham, Hotham v Doughty* [1901] 2 Ch 790 (subsequently varied: [1902] 2 Ch 575, CA). As to the trustees' duty to seek professional advice see *Re Duke of Northumberland, Halifax v Northumberland* [1951] Ch 202, [1950] 2 All ER 1181. See also the Trustee Investments Act 1961 s 6; and TRUSTS vol 48 (2007 Reissue) PARA 1027.

3 *Re Lord Coleridge's Settlement* [1895] 2 Ch 704. The trustees will be protected for acting on the direction of the tenant for life: see the Settled Land Act 1925 ss 97, 98; and PARAS 891-892 post.

4 *Re Hunt's Settled Estates, Bulteel v Lawdeshayne* [1905] 2 Ch 418 (on appeal [1906] 2 Ch 11, CA); *Re Cowley Settled Estates* [1926] Ch 725.

5 See the Settled Land Act 1925 s 75(2). For the meaning of 'settlement' see PARA 678 note 1 ante.

6 Ibid s 75(2).

7 Ibid s 75(4).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/806. Investment or application under direction of the court.

806. Investment or application under direction of the court.

If the investment or other application¹ is to be made under the direction of the court, it must be made on the application of the tenant for life or of the trustees². All or any part of any capital money paid into court may, if the court thinks fit, be at any time paid out to the trustees of the settlement³, although the tenant for life has in the first instance exercised his option to have it paid into court⁴. Capital money may be paid to trustees of the settlement residing abroad⁵. On such an application the court will act on the same principle as it would if the money had been in the hands of the trustees and they had referred the matter to the court⁶.

1 See PARA 804 ante.

2 Settled Land Act 1925 s 75(3). As to applications to the court see PARAS 792-793 ante. For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 Ibid s 75(8). For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante. As to the payment of money into court see PARA 798 note 8 ante.

4 As to such option see PARA 804 ante.

5 *Re Lloyd, Edwards v Lloyd* (1886) 54 LT 643; *Re Simpson, Re Whitchurch* [1897] 1 Ch 256, CA.

6 *Clarke v Thornton* (1887) 35 ChD 307.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/807. Application of purchase money for interest less than fee simple.

807. Application of purchase money for interest less than fee simple.

If capital money arising under the Settled Land Act 1925¹ is purchase money paid in respect of (1) a lease for years²; (2) any other estate or interest in land less than the fee simple³; or (3) a reversion dependent on any such lease, estate or interest⁴, the trustees of the settlement⁵, or the court⁶, as the case may be, and, in the case of the court, on the application of any party interested in that money, may require and cause it to be laid out, invested, accumulated and paid in such manner as, in the judgment of the trustees or of the court, as the case may be, will give to the parties interested in that money the like benefit from it as they might lawfully have had from the lease, estate, interest or reversion in respect of which the money was paid or as near to it as may be⁷.

- 1 For the meaning of 'capital money arising under the Act' see PARA 795 ante.
- 2 Settled Land Act 1925 s 79(a). For the meaning of 'lease' see PARA 685 note 13 ante.
- 3 Ibid s 79(b). As to interests in land see REAL PROPERTY vol 39(2) (Reissue) PARA 74 et seq.
- 4 Ibid s 79(c).
- 5 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.
- 6 As to the court see PARA 792 ante.
- 7 Settled Land Act 1925 s 79. The words in this provision which direct apportionment follow those of the Settled Estates Act 1877 s 37 (repealed), which are similar to the words of the Lands Clauses Consolidation Act 1845 s 74 (as amended), the cases on which form a precedent for the interpretation of the present enactment: see *Cottrell v Cottrell* (1885) 28 ChD 628. See also COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 682. On a sale of settled leaseholds by the court where there is no trust or power of sale, the same method of distribution is adopted as in a case of compulsory purchase: *Re Lingard, Lingard v Squirrell* [1908] WN 107. As to the principles on which apportionment should be applied see *Cottrell v Cottrell* supra; *Re Robinson's Settlement Trusts* [1891] 3 Ch 129; *Re Fullerton's Will* [1906] 2 Ch 138; *Re Duke of Westminster's Settled Estates, Duke of Westminster v Earl of Shaftesbury* [1921] 1 Ch 585.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/808. Modes of application.

808. Modes of application.

Capital money arising under the Settled Land Act 1925¹, when received, must be invested or otherwise applied wholly in one, or partly in one and partly in another or others, of certain specified modes, subject to payment of claims properly payable out of it and to the application of it for any special authorised object for which it was raised². The modes are as follows.

(1) Investment in government securities³, or other securities in which the trustees of the settlement⁴ are by the settlement or by law authorised to invest trust money of the settlement, with power to vary the investment into or for any other such securities⁵.

(2) Discharge, purchase or redemption of incumbrances affecting the whole estate the subject of the settlement⁶, or of Crown rent, chief rent or quit rent⁷ charged on or payable out of the settled land⁸, or of any charge in respect of an improvement created on a holding under the Agricultural Holdings Act 1986, or any similar previous enactment⁹.

A mortgage of a long term is a mortgage affecting the inheritance, whether it is in possession¹⁰ or reversion¹¹. A mortgage of part of the land may be discharged out of capital money arising from another part¹², even when the two parts are settled by different instruments¹³, or in the actual event devolve on different persons¹⁴; and capital money arising from the proceeds of sale of chattels settled to devolve with land may be applied in the discharge of incumbrances affecting the inheritance of the land, by reference to the limitations of which, although by another instrument, the chattels are settled, notwithstanding that different persons may become entitled to the proceeds of the chattels and to the land¹⁵. Capital money arising from land may be applied in discharging inheritance tax on heirlooms settled on corresponding trusts¹⁶. So much of a charge on land for expenses incurred by a local authority in sewerage, paving and flagging new streets¹⁷ as represents capital, although payable by instalments, may be paid out of capital money¹⁸, but not a terminable rentcharge of which the tenant for life is bound to pay the instalments¹⁹, unless it comes within the definition of an improvement rentcharge²⁰. The tenant for life may direct the application of capital money arising under the Settled Land Act 1925 in discharge of incumbrances, notwithstanding that his interest is subject to a term created by the settlement for that purpose, provided that his direction is in good faith and in the interest of all parties²¹. However, a purchaser is not justified in paying his purchase money, at the request of the tenant for life, to an incumbrancer who has priority over the settlement²².

(3) Payment for any improvement authorised by the Settled Land Act 1925²³.

(4) Payment as for an improvement authorised by that Act of any money expended and costs incurred by a landlord in or about the execution of certain specified improvements to agricultural holdings²⁴.

(5) Payment for equality of exchange of settled land²⁵.

(6) Redemption of any compensation rentcharge created in respect of the extinguishment of manorial incidents, and affecting the settled land²⁶.

(7) Commuting any additional rent made payable on the conversion of a perpetually renewable leasehold interest into a long term, and satisfying any claim for compensation on such conversion by any officer, solicitor or other agent of the lessor in respect of fees or remuneration which would have been payable by the lessee or underlessee on any renewal²⁷.

(8) Purchase of the freehold reversion in fee of any part of the settled land, being leasehold land held for years²⁸.

(9) Purchase of land²⁹ in fee simple, or of leasehold land held for 60 years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals in it³⁰, or of or in respect of rights or powers relative to the working of mines or minerals in it or in other land³¹.

Land may be acquired on a purchase or exchange to be made subject to a settlement, notwithstanding that the land is subject to any Crown rent, quit rent, chief rent or other incident of tenure, or to any easement, right or privilege, or to any restrictive covenant, or to any liability to maintain or repair walls, fences, sea walls, river banks, dykes, roads, streets, sewers or drains, or to any improvement rentcharge which is capable under the Settled Land Act 1925 of being redeemed out of capital money³². Ground rents may be purchased³³, but not an equity of redemption³⁴. Capital money arising from settled land in England or Wales cannot be applied in the purchase of land out of England or Wales, unless the purchase is expressly authorised by the settlement³⁵.

(10) Purchase, either in fee simple or for a term of 60 years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right or privilege convenient to be held with the settled land for mining or other purposes³⁶.

(11) Redemption of an improvement rentcharge³⁷.

(12) Purchase, with the leave of the court³⁸, of any leasehold interest where the immediate reversion is settled land, so as to merge the leasehold interest (unless the court otherwise directs) in the reversion, and notwithstanding that the leasehold interest may have less than 60 years to run³⁹.

(13) Payment of the costs and expenses of all plans, surveys and schemes⁴⁰ made with a view to, or in connection with the improvement or development of, the settled land or any part of it, or the exercise of any statutory powers, and of all negotiations entered into by the tenant for life with a view to the exercise of any of such powers, notwithstanding that the negotiations may prove abortive, and payment of the costs and expenses of opposing any such proposed scheme affecting the settled land, whether or not the scheme is made⁴¹.

(14) Payment to a local or other authority of such sum as may be agreed in consideration of the authority taking over and becoming liable to repair a private road on the settled land or a road for the maintenance of which a tenant for life is liable *ratione tenuræ*⁴².

(15) Financing any person who may have agreed to take a lease⁴³ or grant for building purposes⁴⁴ of the settled land, or any part of it, by making advances to him in the usual manner on the security of an equitable mortgage of his building agreement⁴⁵.

(16) Payment to any person becoming absolutely entitled or empowered to give an absolute discharge⁴⁶.

(17) Payment of costs, charges and expenses of or incidental to the exercise of any of the powers or the execution of any of the provisions of the Settled Land Act 1925, including the costs and expenses incidental to any of the authorised modes of investing or applying capital money⁴⁷.

(18) Any other mode authorised by the settlement with respect to money produced by the sale of the settled land⁴⁸.

Capital money may also be applied:

117 (a) in payment of inheritance tax in respect of property comprised in the settlement⁴⁹;

- 118 (b) where the settled land is leased, in payment of money expended and costs incurred by a landlord under the Landlord and Tenant Act 1927 in or about the execution of any improvement or of any sum due to a tenant under that Act in respect of compensation for an improvement, and any costs, charges and expenses incidental to it, or in payment of the costs, charges and expenses of opposing any proposal by a tenant to execute an improvement⁵⁰;
- 119 (c) in payment of a coast protection charge or expenses incurred in carrying out work under a works scheme under the Coast Protection Act 1949⁵¹;
- 120 (d) in payment of certain expenses and making certain payments under the Landlord and Tenant Act 1954⁵²;
- 121 (e) in payment of expenses incurred in, or in connection with, proceedings taken relating to the acquisition of the freehold or an extended lease under the Leasehold Reform Act 1967⁵³;
- 122 (f) in payment of compensation to a tenant where rights under the Leasehold Reform Act 1967 are excluded⁵⁴;
- 123 (g) in payment of expenses incurred by a landlord under a farm business tenancy in, or in connection with, the making of any physical improvement on the holding, in payment of compensation for tenant's improvements, and in payment of the costs, charges and expenses incurred on a reference to arbitration under the Agricultural Tenancies Act 1995⁵⁵.

1 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

2 Settled Land Act 1925 s 73(1). As to the raising of capital money for special authorised purposes see s 71 (as amended); and PARAS 849-850 post.

3 For the meaning of 'securities' see PARA 693 note 1 ante. As to government securities see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1335 et seq.

4 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante. For the meaning of 'settlement' see PARA 678 note 1 ante.

5 Settled Land Act 1925 s 73(1)(i). As to what investments are permitted by law to trustees see the Trustee Act 1925 Pt I (ss 2-11) (as amended); the Trustee Investments Act 1961; and TRUSTS vol 48 (2007 Reissue) PARA 1017 et seq.

6 Arrears of a jointure rentcharge are an incumbrance affecting the inheritance: see *Re Duke of Manchester's Settlement* [1910] 1 Ch 106. It seems that future payments of a jointure or pin money cannot be redeemed out of capital money: see *Re Knatchbull's Settled Estate* (1884) 27 ChD 349 at 353 (affd (1885) 29 ChD 588, CA); *Re Frewen, Frewen v James* (1888) 38 ChD 383 at 384; *Re Duke of Manchester's Settlement* supra at 115. As to pin money and jointure see PARAS 724-725 ante.

7 As to Crown rent, chief rent and quit rent see REAL PROPERTY vol 39(2) (Reissue) PARA 84.

8 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

9 Settled Land Act 1925 s 73(1)(ii) (amended by the Finance Act 1963 s 73(8)(b), Sch 11 Pt VI; and the Agricultural Holdings Act 1986 s 100, Sch 14 para 11). As to the redemption of rentcharges generally see the Rentcharges Act 1977 ss 8-10 (as amended); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 900 et seq. The Settled Land Act 1925 s 73(1)(ii) (as amended) also authorises capital money to be applied in the discharge, purchase or redemption of rentcharge in lieu of tithe. However, tithe rentcharge was extinguished on 2 October 1936: see ECCLESIASTICAL LAW. As to the redemption of a charge in respect of compensation for improvements paid to an agricultural tenant see *Re Duke of Wellington's Parliamentary Estates, King v Wellesley* [1972] Ch 374, [1971] 2 All ER 1140. See also note 24 infra. As to agricultural holdings generally see AGRICULTURAL LAND vol 1 (2008) PARA 323 et seq.

10 See *Re Frewen, Frewen v James* (1888) 38 ChD 383.

11 See *Re Lord Gisborough's Settled Estates* [1921] 2 Ch 39, where the court authorised the application of capital money in payment of portions, although the similar provisions in the Settled Land Act 1882 s 21(ii) (repealed), did not expressly sanction this. See also MORTGAGE vol 77 (2010) PARA 101 et seq.

- 12 *Re Chaytor's Settled Estate Act* (1884) 25 ChD 651; *Re Navan and Kingscourt Rly Co, ex p Dyas* (1888) 21 LR Ir 369.
- 13 *Re Lord Stafford's Settlement and Will, Gerard v Stafford* [1904] 2 Ch 72.
- 14 *Re Freme, Freme v Logan* [1894] 1 Ch 1, CA. See PARA 685 ante.
- 15 *Re Duke of Marlborough's Settlement, Duke of Marlborough v Marjoribanks* (1886) 32 ChD 1, CA; *Re Lord Stafford's Settlement and Will, Gerard v Stafford* [1904] 2 Ch 72. See PARA 937 et seq post.
- 16 *Re Earl of Egmont's Settled Estate, Lefroy v Egmont* [1912] 1 Ch 251, a decision relating to estate duty (now inheritance tax). See INHERITANCE TAXATION vol 24 (Reissue) PARA 401 et seq.
- 17 See HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 159.
- 18 See *Re Legh's Settled Estate* [1902] 2 Ch 274; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 164. A liability to repair *ratione tenuræ* is not an incumbrance affecting the inheritance of the settled land (*Re Hodgson's Settled Estate, Altamont v Forsyth* [1912] 1 Ch 784), but capital money can now be applied for the purpose of discharging such a liability (see the Settled Land Act 1925 s 73(1)(xvii): see head (14) in the text). As to liability *ratione tenuræ* see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 196-199.
- 19 See *ibid* s 85(3) (see PARA 814 post); and *Re Knatchbull's Settled Estate* (1885) 29 ChD 588, CA.
- 20 As to the redemption of improvement rentcharges see PARA 822 post.
- 21 *Re Richardson, Richardson v Richardson* [1900] 2 Ch 778. See also *Re Earl of Stamford and Warrington, Payne v Grey* [1925] Ch 162 at 175; revsd on another point [1925] Ch 589, CA.
- 22 *Re Norton and Las Casas' Contract* [1909] 2 Ch 59. See also PARA 804 note 6 ante.
- 23 Settled Land Act 1925 s 73(1)(iii). As to applying capital money on improvements see PARAS 809 et seq post; and for a list of authorised improvements see PARA 815 et seq post. As to the payment of the cost of repairs out of capital see PARAS 671 ante, 963 post. Money, not being rent, received since 1925 by way of damages or compensation for breach of any covenant by a lessee or grantee contained in any lease or grant of settled land (except in the cases mentioned in PARA 801 ante) may be applied, at any time within 12 months after its receipt or such extended period as the court may allow, in or towards payment of the costs of making good in whole or in part the breach of covenant in respect of which it was received, or its consequences, and the trustees of the settlement, if they think fit, may require any money so received, or any part of it, to be so applied, the work required to be done for the purpose being deemed to be an improvement authorised by s 83, Sch 3 Pt I: see s 80(1)-(3), (5); and PARA 801 ante. Improvements may be paid for out of capital money notwithstanding that the settlement contains a power to pay for them out of income: see *Clarke v Thornton* (1887) 35 ChD 307; *Re Lord Stamford's Settled Estates* (1889) 43 ChD 84; *Re Thomas, Weatherall v Thomas* [1900] 1 Ch 319; *Re Tubbs, Dykes v Tubbs* [1915] 2 Ch 137, CA. Cf *Re Partington, Reigh v Kane* [1902] 1 Ch 711, where the decision turned on the special facts of the case. As to the retention by the tenant for life of sums recovered by way of relief from income tax in respect of expenditure on improvements which have been paid for out of capital money see *Re Pelly's Will Trusts, Ransome v Pelly* [1957] Ch 1, [1956] 2 All ER 326, CA; *Menzies' Trustees v Lindsay* 1957 SC 44. See also PARA 820 post; and AGRICULTURAL LAND vol 1 (2008) PARA 485. As to the power to charge the settled land with the cost of erecting a new mansion house see AGRICULTURAL LAND vol 1 (2008) PARA 620 et seq.
- 24 Settled Land Act 1925 s 73(1)(iv) (amended by the Agricultural Holdings Act 1986 Sch 14 para 11). The improvements are those specified in the Agricultural Holdings Act 1986 s 64(1), Sch 7 (see AGRICULTURAL LAND vol 1 (2008) PARAS 431-432): see the Settled Land Act 1925 s 73(1)(iv) (as so amended). This includes repairs to fixed equipment: *Re Duke of Northumberland, Halifax v Northumberland* [1951] Ch 202, [1950] 2 All ER 1181; *Re Lord Brougham and Vaux's Settled Estates* [1954] Ch 24, [1953] 2 All ER 655; *Re Wynn, Public Trustee v Newborough* [1955] 2 All ER 865, [1955] 1 WLR 940; cf *Re Boston's Will Trusts, Inglis v Boston* [1956] Ch 395, [1956] 1 All ER 593, all of which cases were decisions on the effect of the Agricultural Holdings Act 1948 s 96 (repealed), but repairs done before that Act came into force cannot, it seems, be paid for out of capital money (*Re Sutherland Settlement Trusts* [1953] Ch 792, [1953] 2 All ER 27). See further PARAS 809, 817 post; and AGRICULTURAL LAND vol 1 (2008) PARA 425 et seq. Capital money cannot be applied under the Settled Land Act 1925 s 73(1)(iv) (as amended) in reimbursing a tenant for life with compensation for improvements paid to an agricultural tenant but if the landlord obtains an order from the minister charging the holding with the repayment of the compensation, the trustees can redeem that charge out of capital money under the Settled Land Act 1925 s 73(1)(ii) (see head (2) in the text): see *Re Duke of Wellington's Parliamentary Estates, King v Wellesley* [1972] Ch 374, [1971] 2 All ER 1140 (decided under the Agricultural Holdings Act 1948 (repealed): see now the Agricultural Holdings Act 1986; and AGRICULTURAL LAND vol 1 (2008) PARA 414 et seq).
- 25 Settled Land Act 1925 s 73(1)(v). As to equality of exchange see PARAS 834-835 post.

26 Ibid s 73(1)(viii). As to the extinguishment of manorial incidents see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 643.

27 Ibid s 73(1)(ix). As to commuting additional rent see the Law of Property Act 1922 s 145, Sch 15 paras 14 (as amended), 15, 17(1), (4) (as amended); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 541-542. See also PARA 978 post.

28 Settled Land Act 1925 s 73(1)(x). There is no statutory power to adjust the rights as between the tenant for life and the remaindermen on the purchase of a reversion.

29 For the meaning of 'land' see PARA 680 note 1 ante.

30 For the meaning of 'mines and minerals' see PARA 680 note 1 ante.

31 Settled Land Act 1925 s 73(1)(xi). This provision may cover an expenditure on repairs up to the amount by which the value of the property acquired would have been increased if such repairs had been executed by the vendor before the sale: see *Re Blake's Settled Estate* [1923] 2 Ch 128. The conveyance of the land must be framed either as a principal or subsidiary vesting deed: see the Settled Land Act 1925 s 10(1); and PARAS 691, 693 ante.

32 Ibid s 74(1). The acquisition on a purchase or exchange before 1926 of any land subject to any such burden is confirmed: see s 74(2). As to what improvement rentcharges are capable of being redeemed out of capital money see PARA 822 post.

33 *Re Peyton's Settlement Trust* (1869) LR 7 Eq 463. See, however, *Ex p Gartside* (1837) 6 LJ Ch 266.

34 *Re Earl Radnor's Settled Estates* [1898] WN 174.

35 Settled Land Act 1925 s 73(2). Capital money may be expended on improvements on land out of England but settled by an English settlement: see *Re Gurney's Marriage Settlement, Sullivan v Gurney* [1907] 2 Ch 496, following an unreported decision, *Re Strousberg* (1886) (see 32 Sol Jo 625). See also *Re Earl of Dunraven's Settled Estates* [1907] 2 Ch 417.

36 Settled Land Act 1925 s 73(1)(xii). 'Mining purposes' includes the sinking and searching for, winning, working, getting, making merchantable, smelting or otherwise converting or working for the purposes of any manufacture, carrying away and disposing of mines and minerals in or under the settled land, or any other land, and the erection of buildings, and the execution of engineering and other works suitable for those purposes: s 117(1)(xv). 'Privilege' includes sporting rights: see *Re Earl of Portarlington's Settled Estates* [1918] 1 IR 362. As to sporting rights see ANIMALS vol 2 (2008) PARA 763 et seq; AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 789 et seq. As to mines see generally MINES, MINERALS AND QUARRIES.

37 Settled Land Act 1925 s 73(1)(xiii). This provision applies to a rentcharge (temporary or permanent) whenever created, in pursuance of any Act of Parliament, with the object of paying off any money advanced for defraying the expenses of an improvement of any kind authorised by s 83, Sch 3 Pt I (see PARA 816 post): see s 73(1)(xiii). As to the redemption of improvement rentcharges see PARA 822 post.

38 As to the court see PARA 792 ante.

39 Settled Land Act 1925 s 73(1)(xiv).

40 This includes schemes under the Town Planning Act 1925 (repealed), or any similar previous enactments: see the Settled Land Act 1925 s 73(1)(xv). The development plans made under the Town and Country Planning Act 1990 Pt II (ss 10-28A) (as amended) (see TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 148 et seq) cannot be considered as schemes for this purpose as only enactments previous to the Settled Land Act 1925 are referred to in s 73(1)(xv).

41 Settled Land Act 1925 s 73(1)(xv). As to the court's power to approve proceedings for the protection of the settled land see PARA 825 post.

42 Ibid s 73(1)(xvii). As to liability *ratione tenuræ* see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 196-199.

43 For the meaning of 'lease' see PARA 685 note 13 ante.

44 'Building purposes' includes the erecting and the improving of, and the adding to, and the repairing of buildings: Settled Land Act 1925 s 117(1)(i).

45 Ibid s 73(1)(xviii). As to sales for less than the best price or rent see PARA 831 post; and as to building leases see PARA 842 post. As to equitable mortgages see MORTGAGE vol 77 (2010) PARAS 118 et seq, 238 et seq.

46 Ibid s 73(1)(xix). This allows payment out to trustees (see *Re Smith, ex p London and North Western Rly Co and Midland Rly Co* (1888) 40 ChD 386, CA) who, if necessary, are appointed for the purpose of receiving the money (see *Re Wright's Trusts* (1883) 24 ChD 662; *Re Harrop's Trusts* (1883) 24 ChD 717; *Re Wootton's Estate* [1890] WN 158). The power to order payment out to trustees is, however, discretionary on the part of the court: *Re Smith, ex p London and North Western Rly Co and Midland Rly Co* supra. See also the Settled Land Act 1925 s 75(8); and PARA 806 ante.

47 Ibid s 73(1)(xx). As to what costs, charges and expenses may be paid under this provision see PARA 823 et seq post. Under the law in force prior to 1926, where the tenant for life was constituted by several persons entitled as tenants in common, each was entitled to employ his own solicitor in completing a sale, and to have his separate costs out of the purchase money: *Smith v Lancaster* [1894] 3 Ch 439, CA. Under the present law the persons constituting the tenant for life are joint tenants and the land is vested in them as express trustees (see PARA 767 ante), and it would seem that the ordinary rule that trustees should not sever would apply to them. As to the severance of joint tenancies see REAL PROPERTY vol 39(2) (Reissue) PARA 198 et seq.

48 Settled Land Act 1925 s 73(1)(xxi). A testator may add to the methods of applying capital, but he cannot limit the discretion given to the tenant for life by the Settled Land Act 1925, though it may be controlled by the court if its exercise, although in good faith, would work injustice to any parties concerned: see *Re Richardson, Richardson v Richardson* [1900] 2 Ch 778. See also PARA 775 ante.

49 See the Inheritance Tax Act 1984 s 212(1), (3); and INHERITANCE TAXATION vol 24 (Reissue) PARA 652.

50 See the Landlord and Tenant Act 1927 s 13(1) (as amended); and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 803. See further PARA 821 post,

51 See the Coast Protection Act 1949 s 11(2)(a) (as amended); and WATER AND WATERWAYS vol 101 (2009) PARA 544.

52 See the Landlord and Tenant Act 1954 s 8, Sch 2 para 6 (as amended); and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1219.

53 See the Leasehold Reform Act 1967 s 6(2), (3), (5) (as amended); and PARA 877 post. As to leasehold enfranchisement see also the Leasehold Reform, Housing and Urban Development Act 1993; and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1389 et seq.

54 Ie under ibid ss 17, 18 (as amended): see Sch 2 para 9 (as amended); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1493.

55 See the Agricultural Tenancies Act 1995 s 33(1) (as amended); and AGRICULTURAL LAND vol 1 (2008) PARA 310 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/809. Payment for improvements generally.

809. Payment for improvements generally.

Capital money arising under the Settled Land Act 1925¹ may be applied in or towards payment for any improvement authorised² by the Act or by the settlement³ without any scheme⁴ for the execution of the improvement being first submitted for approval to, or approved by, the trustees of the settlement⁵ or the court⁶. In any case where it appears proper, the court may by order direct or authorise capital money to be applied in or towards payment for any improvement authorised by the Settled Land Acts 1882 to 1890⁷, or the Settled Land Act 1925, notwithstanding that a scheme was not submitted for approval as required by the Settled Land Act 1882 to the trustees of the settlement or to the court, or even that the tenant for life was not competent to submit a scheme, and notwithstanding that no capital money is immediately available for the purpose⁸. The fact that there is no capital money immediately available does not prevent the determination of the legal question whether the proposed works are improvements within the meaning of the Settled Land Act 1925⁹.

If the trustees of a settlement do not oppose an application by a tenant for life for the application of capital money in payment for an improvement, when his interest is opposed to the remaindermen, it is their duty to remain neutral, and the court will not hear counsel on their behalf in support of the application¹⁰.

In some circumstances capital money so expended may be required to be repaid to capital¹¹.

When lands are settled by different instruments on the same trusts, capital money arising under one deed may be applied in the improvement of land settled by another¹².

Apart from statute, and in the absence of some express provision in the instrument under which his estate or interest arises, a tenant for life of, or any other owner having a limited interest in, land has no claim against the inheritance for the cost of buildings erected or improvements made by him¹³.

The court has jurisdiction to order capital money to be applied towards payment for an improvement authorised by the Settled Land Act 1925 notwithstanding that it was executed prior to the Act¹⁴. The court's jurisdiction continues even though the property improved has been sold¹⁵.

In the exercise of this retrospective jurisdiction, the court will scrutinise a claim closely¹⁶, and in general will refuse to allow recoupment where the applicant has deliberately carried out improvements knowing that the expenditure could not then be recovered from capital, but would be borne by himself¹⁷. Delay in asking for recoupment is a ground for refusal¹⁸. A power in or direction to trustees to effect improvements out of income¹⁹ does not deprive a tenant for life of his right to require capital money to be applied in payment for them; nevertheless a provision by the settlor that the expense of executing improvements is to fall on income is a ground for refusing the application of a tenant for life²⁰. A claim was allowed for recoupment by the executors of a life tenant who, having been erroneously advised that improvements could not be paid out of capital, paid for them himself²¹.

It seems that the court has no jurisdiction to authorise capital money to be applied in paying for the cost of repairs and maintenance authorised by the Agricultural Holdings Act 1948 where they were incurred before that Act came into operation²².

1 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

2 As to what improvements are authorised see the Settled Land Act 1925 s 83, Sch 3; and PARA 815 et seq post.

3 For the meaning of 'settlement' see PARA 678 note 1 ante.

4 Before the coming into operation of the Settled Land Act 1925, a scheme had to be submitted by the tenant for life for the approval of the trustees of the settlement or of the court under the Settled Land Act 1882 s 26(1) (repealed): see *Re Wormald's Settled Estate, Wormald v Ollivant* [1908] WN 214.

5 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

6 Settled Land Act 1925 s 84(1). As to the court see PARA 792 ante.

7 As to these Acts see PARA 678 note 1 ante.

8 See the Settled Land Act 1925 s 87. The principles upon which the court acts were considered in *Re Tucker's Settled Estates* [1895] 2 Ch 468, CA; *Re St Germans Settled Estates* [1924] 2 Ch 236. See also *Re Keck's Settlement* [1904] 2 Ch 22.

9 *Re Calverley's Settled Estates* [1904] 1 Ch 150.

10 *Re Hotchkin's Settled Estates* (1887) 35 ChD 41 at 43, CA, per North J. See, however, *Re Marquis of Ailesbury's Settled Estates* [1892] 1 Ch 506 at 548, CA, where trustees taking different sides were allowed separate costs.

11 As to the repayment of capital money see PARA 812 post.

12 *Re Mundy's Settled Estates* [1891] 1 Ch 399, CA; *Re Byng's Settled Estates* [1892] 2 Ch 219; *Re Lord Stamford's Settled Estates* (1889) 43 ChD 84. Cf *Re Clitheroe's Settled Estates* (1869) 20 LT 6; *Donaldson v Donaldson* (1876) 3 ChD 743. So, too, capital money arising from the sale of settled land in Ireland is applicable for the improvement of English property settled by the same settlement (*Re Eyre Coote, Coote v Cadogan* (1899) 81 LT 535), and money liable to be laid out in the purchase of settled land in England is available for improvements on land in Scotland comprised in the same settlement (*Re Gurney's Marriage Settlement, Sullivan v Gurney* [1907] 2 Ch 496).

13 *Bostock v Blakeney* (1789) 2 Bro CC 653; *Caldecott v Brown* (1842) 2 Hare 144; *Mathias v Mathias* (1858) 3 Sm & G 552; *Rowley v Ginnever* [1897] 2 Ch 503.

14 *Re Lord Sherborne's Settled Estate* [1929] 1 Ch 345; *Re Borough Court Estate* [1932] 2 Ch 39. Where the value of the improvements has diminished, a rebate will be made: *Re Jacques Settled Estates* [1930] 2 Ch 418; *Re Lord Sherborne's Settled Estate* supra.

15 *Re Borough Court Estate* [1932] 2 Ch 39.

16 *Re Tucker's Settled Estates* [1895] 2 Ch 468, CA.

17 *Re Ormrod's Settled Estate* [1892] 2 Ch 318; *Re Borough Court Estate* [1932] 2 Ch 39. Recoupment of the cost of electric light installation made before 1926 has been allowed because, although it was not then an authorised improvement, it was an improvement that would have to be made sooner or later, and became authorised by the Settled Land Act 1925 s 83, Sch 3 Pt III para (ii) (see PARA 818 post): *Re Jacques Settled Estates* [1930] 2 Ch 418. See also *Re Sutherland Settlement Trusts* [1953] Ch 792, [1953] 2 All ER 27.

18 *Re Allen's Settled Estate* (1909) 126 LT Jo 282.

19 *Clarke v Thornton* (1887) 35 ChD 307; *Re Lord Stamford's Estate* (1887) 56 LT 484. It is otherwise if there is a trust coming before the trust for the tenant for life and providing for payment of improvements out of income: *Re Partington, Reigh v Kane* [1902] 1 Ch 711. If a tenant for life resorts to a fund created by the settlement for the purposes of improvement, he is bound to comply with any condition imposed by the settlement for the repayment of that fund: *Re Sudbury and Poynton Estates, Vernon v Vernon* [1893] 3 Ch 74.

20 *Countess of Cardigan v Curzon-Howe* (1893) 9 TLR 244; *Re Partington, Reigh v Kane* [1902] 1 Ch 711.

21 *Re St Germans Settled Estates* [1924] 2 Ch 236.

22 See *Re Sutherland Settlement Trusts* [1953] Ch 792, [1953] 2 All ER 27, where Harman J did not follow on this point the decision of Vaisey J in *Re Duke of Northumberland, Halifax v Northumberland* [1951] Ch 202,

[1950] 2 All ER 1181. See also *Re Lord Boston's Will Trusts, Inglis v Lord Boston* [1956] Ch 395, [1956] 1 All ER 593. See further PARA 808 head (4) and note 24 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/810. Payment out of capital money in the hands of the trustees.

810. Payment out of capital money in the hands of the trustees.

Capital money¹ in the hands of trustees of the settlement² may be applied by them in or towards payment for the whole or any part of any work or operation comprised in an authorised improvement³ on: (1) a certificate of a competent engineer or able practical surveyor employed independently of the tenant for life, certifying that the work or operation comprised in the improvement or some specific part of it, has been properly executed and what amount is properly payable in respect of it⁴; or (2) a court order directing or authorising the trustees so to apply a specified portion of the capital money⁵.

Capital money so applied may be required in certain cases to be replaced⁶.

- 1 For the meaning of 'capital money arising under the Act' see PARA 795 ante.
- 2 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.
- 3 Ie an improvement authorised by the Settled Land Act 1925 (see PARA 815 et seq post) or by the settlement: see the Settled Land Act 1925 s 84(1).
- 4 Ibid s 84(2)(i). The certificate does not vouch for the propriety of the improvements or that it is authorised by the Act or by the settlement, but is conclusive as an authority and discharge to the trustees for any payment made by them in pursuance of it: see s 84(2)(i).
- 5 Settled Land Act 1925 s 84(2)(ii). On an application under this provision it is apprehended that the court will have to be satisfied not merely of the fact of the expenditure, but of the propriety of it; the court has a discretion, and its duties are not merely ministerial: see *Re Keck's Settlement* [1904] 2 Ch 22, where, however, there was an approved scheme which, since 1925, is no longer necessary (see PARA 809 note 4 ante).
- 6 As to the repayment of capital money see PARA 812 et seq post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(iv) Powers in respect of Capital Money/811. Payment out of funds in court.

811. Payment out of funds in court.

If the capital money to be expended is in court, then, if it thinks fit, on a report or certificate of the Minister of Agriculture, Fisheries and Food or of a competent engineer or able practical surveyor approved by the court, or on such other evidence as the court may think sufficient, the court may direct the application of the money, or any part of it, in or towards payment for the whole or part of any work or operation comprised in the improvement¹.

1 Settled Land Act 1925 ss 84(3), 117(1)(xvi) (amended by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554). As to the minister's powers see PARA 965 post. As to the Minister of Agriculture, Fisheries and Food generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 435 et seq. As to applications to the court see PARA 792 et seq ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/812. Repayment by instalments.

(v) Repayment of Capital Money

812. Repayment by instalments.

If capital money is applied in or towards payment for an improvement authorised by Part I of the Third Schedule to the Settled Land Act 1925¹, or by the settlement, the money is not repayable, but in relation to other improvements there may, and in some circumstances must, be a requirement for repayment².

If the improvement is authorised by Part II of that Schedule³, the trustees may, if they think fit, and must, if so directed by the court, before they make any such application of capital money require that the money, or any part of it, be repaid to them out of the income of the settled land⁴ by not more than 50 half-yearly instalments, the first of such instalments to be paid or to be deemed to have become payable at the expiration of six months from the date when the work or operation in payment for which the money is to be applied was completed⁵. If the court authorises capital money to be applied in payment for the improvement, as a condition of making the order it may require that the capital money, or any part of it, be repaid to the trustees of the settlement out of the income of the settled land by a fixed number of periodical instalments to be paid at the times appointed by the court⁶.

If the improvement is authorised by Part III of that Schedule⁷, then, before they make any such application of capital money, the trustees must require the money to be repaid to them out of the income of the settled land by not more than 50 half-yearly instalments, commencing as mentioned above⁸. If the court authorises capital money to be applied in payment for the improvement, as a condition of making the order it must⁹ require that the whole of the capital money be repaid to the trustees of the settlement out of the income of the settled land by a fixed number of periodical instalments to be paid at the times appointed by the court¹⁰.

The court may require that any incumbrancer of the estate or interest of the tenant for life be served with notice of the proceedings¹¹.

All money received by the trustees of the settlement in respect of these instalments is to be held by them as capital money arising from freehold land under the settlement unless the court otherwise directs¹².

1 ie authorised by the Settled Land Act 1925 s 83, Sch 3 Pt I: see PARA 816 post. As to the expenditure of capital money on improvements see PARA 809 ante. Improvements specified in the Agricultural Holdings Act 1986 s 64, Sch 7 are deemed to be authorised by the Settled Land Act 1925 Sch 3 Pt I (see the Agricultural Holdings Act 1986 s 89(1) (as amended)), and their cost is not repayable: see AGRICULTURAL LAND vol 1 (2008) PARA 485.

2 See the Settled Land Act 1925 s 84(2) proviso.

3 ie authorised by *ibid* Sch 3 Pt II, and not by Sch 3 Pt I, or by the settlement. As to the improvements authorised by Sch 3 Pt II see PARA 817 post.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

5 Settled Land Act 1925 s 84(2) proviso (a).

6 See *ibid* s 84(4).

7 Ie authorised by *ibid* Sch 3 Pt III, and not by the settlement. As to the improvements authorised by Sch 3 Pt III see PARA 818 post.

8 See *ibid* s 84(2) proviso (b). As to the commencement of the instalments see the text to note 5 supra.

9 However, as to the court's powers under the Settled Land and Trustee Act (Court's General Powers) Act 1943 see PARA 671 ante.

10 See the Settled Land Act 1925 s 84(4).

11 See *ibid* s 84(4). For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

12 *Ibid* s 84(5). For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/813. Creation of rentcharges to discharge instalments.

813. Creation of rentcharges to discharge instalments.

When a tenant for life¹ is required by the trustees of the settlement² to repay the capital money expended or any part of it by instalments³, he may create out of the settled land⁴ or any part of it a yearly rentcharge in favour of the trustees sufficient for that purpose⁵.

Where a court order is made requiring repayment by instalments, the settled land stands charged with the payment to the trustees of the settlement of a yearly rentcharge sufficient in amount to discharge the periodical instalments and such a rentcharge takes effect as if limited by the settlement prior to the estate of the tenant for life and the trustees have all statutory and other powers for its recovery⁶.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

3 As to repayment of capital money by instalments see PARA 812 ante.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

5 Settled Land Act 1925 s 85(1). The rentcharge does not charge the equitable interest of the tenant for life, and a life interest determinable on alienation does not cease upon the execution of the charge: see *Re Liberty's Will Trusts, Blackmore v Stewart Liberty* [1937] Ch 176, [1937] 1 All ER 399; and PARA 918 post. The Rentcharges Act 1977 s 2 does not prevent the creation of such a rentcharge: see s 2(3)(d); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 774.

6 Settled Land Act 1925 s 85(2). The rentcharge accrues from day to day and is payable at the times appointed for payment of the periodical instalments: s 85(2). As to the recovery of rentcharges see the Law of Property Act 1925 ss 121 (as amended), 122; and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 865 et seq. The instalments of the rentcharge are capital money unless the court otherwise directs: see PARA 812 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/814. Overreaching of rentcharges.

814. Overreaching of rentcharges.

Rentcharges created to discharge instalments of capital money¹ are not redeemable out of capital money², but they may be overreached³ in like manner as if they were limited by the settlement⁴ and cease when the land affected by the improvement ceases to be settled land⁵, or is sold or exchanged⁶. They may be shifted on to other land with the consent of the incumbrancer so as to exonerate the land originally charged⁷.

1 As to the creation of rentcharges for this purpose see PARA 813 ante.

2 As to the redemption out of capital money of an improvement rentcharge, created to pay for an improvement where the tenant for life is not obliged to replace the cost see PARA 822 post.

3 As to overreaching see PARA 874 post.

4 For the meaning of 'settlement' see PARA 678 note 1 ante.

5 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

6 See the Settled Land Act 1925 s 85(3); and PARA 808 ante. If part of the land affected by the improvement remains subject to the settlement the rentcharge remains in force in regard to the settled land: see s 85(3).

7 As to the power to shift incumbrances see PARA 851 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/815. Improvements payable out of capital money.

815. Improvements payable out of capital money.

The improvements authorised by the Settled Land Act 1925 are the making or execution on or in connection with, and for the benefit of, settled land¹ of any of the specified works² and any operation³ incident to or necessary or proper in the execution of any of those works, or necessary or proper for carrying into effect any of those purposes, or for securing the full benefit of any of those works or purposes⁴.

In order that improvements are to be paid for out of capital money⁵, they must fall within the improvements enumerated in Schedule 3 to the Settled Land Act 1925⁶, or be authorised by other legislation⁷, or by the settlement⁸, or by the court⁹. The code provided by the Settled Land Act 1925 supersedes and enlarges the lists contained in the Settled Land Acts 1882 to 1890¹⁰, but decisions interpreting any part of those lists will in general be in point as regards the corresponding part of the Settled Land Act 1925 and are cited accordingly.

1 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

2 ie works mentioned in the Settled Land Act 1925 s 83, Sch 3: see s 83.

3 In *Re De Crespigny's Settled Estates* [1914] 1 Ch 227, CA, an estate office, to be constructed in connection with the development of the land as a building estate, was treated as such an operation. See further PARAS 816 note 18, 817 note 4 post.

4 Settled Land Act 1925 s 83.

5 As to payment for improvements out of capital money see PARA 809 et seq ante.

6 See *Re Lord Gerard's Settled Estates* [1893] 3 Ch 252, CA; *Re Willis, Willis v Willis* [1902] 1 Ch 15 at 23, CA, per Romer LJ; *Re Blaggrave's Settled Estates* [1903] 1 Ch 560 at 564, CA, per Cozens-Hardy LJ. As to the improvements see PARAS 816-818 post.

7 See the Landlord and Tenant (War Damage) Act 1939 s 3 (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4); the Hill Farming Act 1946 s 11 (as amended: see AGRICULTURAL LAND vol 1 (2008) PARA 620); and the Agricultural Holdings Act 1986 s 89(1), Sch 7 (see PARA 808 head (4) ante; and AGRICULTURAL LAND vol 1 (2008) PARA 432). As to charging the inheritance with the cost of improvements in consequence of the Improvement of Land Act 1864 see AGRICULTURAL LAND vol 1 (2008) PARA 613 et seq.

8 *Re Earl Egmont's Settled Estates, Egmont v Lefroy* (1900) 16 TLR 360.

9 As to the court's power to sanction an unauthorised transaction see PARAS 670-672 ante. As to payment for repairs (not being authorised improvements) out of capital see PARA 963 post.

10 As to these Acts see PARA 678 note 1 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/816. Improvements the costs of which are not liable to be replaced by instalments.

816. Improvements the costs of which are not liable to be replaced by instalments.

The costs of the following improvements authorised by Part I of the Third Schedule to the Settled Land Act 1925¹ are not liable to be replaced by instalments²:

- 124 (1) drainage³, including the straightening, widening or deepening⁴ of drains, streams and watercourses⁵;
- 125 (2) bridges⁶;
- 126 (3) irrigation⁷ and warping⁸;
- 127 (4) drains, pipes and machinery for supply and distribution of sewage as manure⁹;
- 128 (5) embanking or weiring from a river or lake, or from the sea or a tidal water¹⁰;
- 129 (6) groynes, sea walls¹¹ and defences against water¹²;
- 130 (7) enclosing, straightening of fences and redivision of fields¹³;
- 131 (8) reclamation and dry warping¹⁴;
- 132 (9) farm roads, private roads¹⁵ and roads or streets in villages or towns¹⁶;
- 133 (10) clearing, trenching and planting¹⁷;
- 134 (11) cottages¹⁸ for labourers, farm servants and artisans, employed on the settled land or not¹⁹;
- 135 (12) farmhouses, offices and outbuildings, and other buildings for farm purposes²⁰;
- 136 (13) sawmills, scutchmills and other mills, water wheels, enginehouses, and kilns which will increase the value of the settled land for agricultural purposes or as woodland or otherwise²¹;
- 137 (14) reservoirs, tanks, conduits, watercourses, pipes, wells, ponds, shafts, dams, weirs, sluices and other works and machinery for supply and distribution of water for agricultural, manufacturing or other purposes, or for domestic or other consumption²²;
- 138 (15) tramways, railways, canals and docks²³;
- 139 (16) jetties, piers and landing places on rivers, lakes, the sea or tidal waters for facilitating transport of persons and of agricultural stock and produce, and of manure and other things required for agricultural purposes, and of minerals, and of things required for mining purposes²⁴;
- 140 (17) markets and market places²⁵;
- 141 (18) streets, roads, paths, squares, gardens or other open spaces for the use, gratuitously or on payment, of the public or of individuals, or for dedication to the public, being necessary or proper in connection with the conversion of land into building land²⁶;
- 142 (19) sewers, drains, watercourses, pipe-making, fencing, paving, brick-making, tile-making and other works necessary or proper in connection with any of the objects previously mentioned²⁷;
- 143 (20) trial pits for mines and other preliminary works necessary or proper in connection with development of mines²⁸;
- 144 (21) reconstruction, enlargement or improvement of any of those works²⁹;
- 145 (22) the provision of small dwellings³⁰, either by means of building new buildings or by means of the reconstruction, enlargement or improvement of existing buildings, if that provision of small dwellings is, in the court's opinion, not injurious³¹

- to the settled land or is agreed to by the tenant for life and the trustees of the settlement³²;
- 146 (23) additions to or alterations in buildings reasonably necessary or proper to enable them to be let³³;
- 147 (24) erection of buildings in substitution for buildings within its area taken by a local or other public authority, or for buildings taken under compulsory powers³⁴, but so that no more money be expended than the amount received for the buildings taken and their sites³⁵;
- 148 (25) the rebuilding³⁶ of the principal mansion house³⁷ on the settled land, provided that the sum to be applied under this head may not exceed one-half of the annual rental³⁸ of the settled land³⁹.

1 See the Settled Land Act 1925 s 83; and PARAS 812, 815 ante.

2 The improvements listed are those contained in *ibid* s 83, Sch 3 Pt I paras (i)-(xxv), which correspond with heads (1)-(25) in the text. By subsequent enactments many other improvements are deemed to be authorised under Sch 3 Pt I: see PARAS 815 note 7 ante, 817 note 1 post.

3 See *Re Lord Leconfield's Settled Estates* [1907] 2 Ch 340, where a complete system of drainage in a mansion house was allowed.

4 As to the drainage of land see WATER AND WATERWAYS vol 101 (2009) PARA 573 et seq. As to the landowner's power to execute drainage works see WATER AND WATERWAYS vol 101 (2009) PARA 587 et seq.

5 Settled Land Act 1925 Sch 3 Pt I para (i).

6 *Ibid* Sch 3 Pt I para (ii).

7 The rights of riparian owners must be respected: *Embrey v Owen* (1851) 6 Exch 353. See also WATER AND WATERWAYS vol 100 (2009) PARA 86.

8 Settled Land Act 1925 Sch 3 Pt I para (iii). Warping is a method of improving, and sometimes of reclaiming, land by causing mud to be deposited on it from tidal or flooded rivers. As to dry warping see note 14 infra.

9 *Ibid* Sch 3 Pt I para (iv). See also the Public Health Act 1936 s 33 by which works for the supply of sewage to land for agricultural purposes are brought within the improvements authorised by the Improvement of Land Act 1864: see AGRICULTURAL LAND vol 1 (2008) PARA 620.

10 Settled Land Act 1925 Sch 3 Pt I para (v).

11 This includes the erection of a sea wall for improving land for building purposes: see *Re Bethlehem and Bridewell Hospitals* (1885) 30 ChD 541.

12 Settled Land Act 1925 Sch 3 Pt I para (vi).

13 *Ibid* Sch 3 Pt I para (vii). This includes the erection of new fences partly in substitution for old ones and partly to divide a park (see *Re Verney's Settled Estates* [1898] 1 Ch 508), and the rebuilding of a garden wall so as to enclose more ground (see *Re Earl Dunraven's Settled Estates* [1907] 2 Ch 417), but not the reconstruction of unmortared stone walls to divide fields (see *Re Duke of Marlborough's Settlement* (1892) 8 TLR 201).

14 Settled Land Act 1925 Sch 3 Pt I para (viii). Dry warping is a method of improving poor soil by spreading upon it a layer of better soil, and is distinguishable from warping (see note 8 supra) in which the coating of soil is deposited by water.

15 This includes a new carriage drive to the mansion house, but not garden paths: see *Re Windham's Settled Estate* [1912] 2 Ch 75.

16 Settled Land Act 1925 Sch 3 Pt I para (ix).

17 *Ibid* Sch 3 Pt I para (x).

18 A gardener's cottage comes within this heading (*Re Earl Lisburne's Settled Estates* [1901] WN 91), but a residence for an estate agent does not (*Re Lord Gerard's Settled Estate* [1893] 3 Ch 252). See also the Settled Land Act 1925 Sch 3 Pt I para (xxii) (see the text head (22)); cf Sch 3 Pt II para (i) (see PARA 817 head (1) post).

19 Ibid Sch 3 Pt I para (xi). For the meaning of 'settled land' see PARA 680 text to note 2 ante.

20 Ibid Sch 3 Pt I para (xii). In *Re Broadwater Estate* (1885) 54 LJ Ch 1104, CA, silos were considered to be buildings, but the cost was disallowed on the ground that ensilage was in an experimental stage. This decision would probably not now be followed. In any case, silos are covered by the Agricultural Holdings Act 1986: see s 64, Sch 7 Pt II para 12; and AGRICULTURAL LAND vol 1 (2008) PARA 432. Reconstruction of unmortared stone walls was not allowed either under this head or under head (21): see *Re Duke of Marlborough's Settlement* (1892) 8 TLR 201.

21 Settled Land Act 1925 Sch 3 Pt I para (xiii). 'Other mills' does not include mills for commercial purposes: see *Re Earl Harrington's Settled Estates* (1906) 75 LJ Ch 460, CA. The expression 'or otherwise' must be construed ejusdem generis: *Re Lord Leconfield's Settled Estates* [1907] 2 Ch 340.

22 Settled Land Act 1925 Sch 3 Pt I para (xiv). This includes fire extinguishing equipment: *Re Earl Dunraven's Settled Estates* [1907] 2 Ch 417. Boring for water and preliminary works are authorised by the Settled Land Act 1925 Sch 3, but fall within Sch 3 Pt II para (vi) (see PARA 817 head (6) post), and the cost may therefore be required to be replaced by instalments.

23 Ibid Sch 3 Pt I para (xv).

24 Ibid Sch 3 Pt I para (xvi). For the meaning of 'mining purposes' see PARA 808 note 36 ante.

25 Ibid Sch 3 Pt I para (xvii). As to the meaning of 'market' see MARKETS, FAIRS AND STREET TRADING. The erection of market places and market houses is authorised by Sch 3 Pt II para (iii): see PARA 817 head (3) post.

26 Ibid Sch 3 Pt I para (xviii). For the meaning of 'land' see PARA 680 note 1 ante. A cricket ground has been allowed, but not a pavilion (*Re Orwell Park Estate* (1904) 48 Sol Jo 193); a golf course and golf club-house have been allowed (*Re Lord De La Warr's Settled Estates* (1911) 27 TLR 534), but not the amount paid to an agricultural tenant by way of compensation on determining his tenancy in order to obtain possession of the land for the golf course (*Re Earl De La Warr's Cooden Beach Settled Estate* [1913] 1 Ch 142, CA). An estate office has been allowed (*Re De Crespigny's Settled Estates* [1914] 1 Ch 227, CA), as being an operation as now mentioned in the Settled Land Act 1925 s 83 (see PARA 815 ante); see now, however, Sch 3 Pt II para (ii) (see PARA 817 head (2) post). As to the dedication of land for open spaces under s 56 (as amended) see PARA 865 post.

27 Ibid Sch 3 Pt I para (xix). It is submitted that this means those previously mentioned in Sch 3 Pt I paras (i)-(xix) (see heads (1)-(19) in the text): see *Re Earl Dunraven's Settled Estates* [1907] 2 Ch 417; and note 29 infra.

28 Settled Land Act 1925 Sch 3 Pt I para (xx). So long as any part of the area remains to be opened up development is going on, and at every stage in the operation of extracting all the workable minerals from the area there may be works to be executed which are accurately described as works preliminary to development: *Re Hanbury's Settled Estates* [1913] 1 Ch 50 at 55 per Eve J. As to the privatisation of the coal industry see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 3.

29 Settled Land Act 1925 Sch 3 Pt I para (xxi). The works referred to in the text are any of the works mentioned in Sch 3 Pt I paras (i)-(xx) (see note 27 supra), however or whenever those works were made, whether under the powers of a Settled Land Act or otherwise: see *Re Earl Dunraven's Settled Estates* [1907] 2 Ch 417. The item includes the reconstruction, enlargement or improvement of preliminary works constructed under the Settled Land Act 1925 Sch 3 Pt I para (xx), even though such works have ceased to be merely preliminary and have become permanent (see *Re Mundy's Settled Estates* [1891] 1 Ch 399, CA), but it is apprehended that it does not apply to new works constructed under any of the subsequent provisions of the Settled Land Act 1925 Sch 3 Pt I or of Sch 3 Pt II or Pt III. Where repairs are necessary in order to carry out an improvement, the work may be treated as a whole and the cost of the repairs as part of the improvement: *Re Lindsay's Settlement (No 2)* [1941] Ch 119, [1941] 1 All ER 143.

30 'Small dwellings' means dwelling houses of a rateable value not exceeding £100 per annum: Settled Land Act 1925 s 117(1)(xxv). As to the rateable value see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 87. Each flat intended to be separately occupied by a workman and his family is a small dwelling: *Re Paddington's Estate* [1940] Ch 43. A limited acreage of settled land may be granted gratuitously or at a nominal rent for the erection of houses for the working classes or the provision of allotments and smallholdings: see PARA 831 post.

31 The provision of dwellings available for the working classes is not to be deemed injurious, but the tenant for life may not make such provision without the trustees' written consent: see the Settled Land Act 1925 s 107(2); and PARA 775 note 8 ante.

32 Ibid Sch 3 Pt I para (xxii). For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante. For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

33 Ibid Sch 3 Pt I para (xxiii). These additions or alterations need not be structural additions or alterations: *Re Lindsay's Settlement (No 2)* [1941] Ch 119, [1941] 1 All ER 143. 'Reasonably necessary or proper' was considered in *Stanford v Roberts* [1901] 1 Ch 440. There must be a present intention to let as distinguished from an intention to occupy: see *Re De Teissier's Settled Estates* [1893] 1 Ch 153; *Stanford v Roberts* supra. This condition is satisfied if the tenant gives notice that he will quit unless the work is done: see *Re Calverley's Settled Estates* [1904] 1 Ch 150. Under this item, or the corresponding one in the Settled Land Act 1890 s 13 (repealed), the following works have been allowed: a new billiard room (*Re Gaskell's Settled Estates* [1894] 1 Ch 485); reconstructing drainage to houses (*Re Thomas, Weatherall v Thomas* [1900] 1 Ch 319; *Re Lord Leconfield's Settled Estates* [1907] 2 Ch 340; *Standing v Gray* [1903] 1 IR 49); substitution of solid concrete floors for floorboards (*Stanford v Roberts* supra); erection of washhouse and privy (*Re Calverley's Settled Estates* supra); structural alterations in public house required as condition of renewal of licence (*Re Gurney's Marriage Settlement, Sullivan v Gurney* [1907] 2 Ch 496); structural alterations in buildings of historic interest open to sightseers (*Re Battle Abbey Settled Estate, Webster v Troubridge* [1933] WN 215); and the conversion of a dwelling house, cottage and shop into residential flats and shops to increase the rental value of the settled land (*Re Swanwick House, Prestbury* [1939] 3 All ER 531). As to when repairs amount to additions or alterations see *Re Conquest, Royal Exchange Assurance v Conquest* [1929] 2 Ch 353. The following works have been disallowed: erection of new building in place of old (*Re Leveson-Gower's Settled Estate* [1905] 2 Ch 95); heating apparatus (*Re Gaskell's Settled Estates* supra); electric light installation (*Re Clarke's Settlement* [1902] 2 Ch 327; *Re Blaggrave's Settled Estates* [1903] 1 Ch 560, CA); engine house for electric light (*Re Blaggrave's Settled Estates* supra); lengthening shaft in silk mill (*Re Earl Harrington's Settled Estates* (1906) 75 LJ Ch 460, CA); repairs to a mansion house, the cost of which the tenant for life desired to be repaid out of a forfeited deposit upon an abortive sale (*Re Foster's Settled Estates* [1922] 1 Ch 348).

Cf the Settled Land Act 1925 Sch 3 Pt II para (v), and Sch 3 Pt III paras (i), (ii): see PARAS 817 head (5), 818 heads (1), (2) post.

34 As to compulsory acquisition of land generally see COMPULSORY ACQUISITION OF LAND.

35 See the Settled Land Act 1925 Sch 3 Pt I para (xxiv). This item refers to buildings 'within an urban sanitary district'. As to such districts see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 1001.

36 Rebuilding involves a question of fact in each case: see *Re Wright's Settled Estate* (1900) 83 LT 159; *Re Kensington Settled Estates* (1905) 21 TLR 351. It does not include structural repairs (see *Re De Teissier's Settled Estates* [1893] 1 Ch 153), or merely architectural improvements (see *Re Lord Gerard's Settled Estate* [1893] 3 Ch 252, CA), or the erection of a laundry 250 yards away from the house (see *Re Earl Dunraven's Settled Estates* [1907] 2 Ch 417). On the other hand, it has been held to include partial reconstruction of a mansion house (see *Re Walker's Settled Estate* [1894] 1 Ch 189), heating and electric light apparatus (see *Re Kensington Settled Estates* supra; *Re Dunham Massey Settled Estates* (1906) 22 TLR 595), and stables connected with the house physically and by use (see *Re Lord Gerard's Settled Estate* supra).

37 As to the meaning of 'principal mansion house' see PARA 789 note 5 ante.

38 In calculating the annual rental, no deduction should be made for mortgage interest, tithes, drainage rates or rentcharges (see *Re Windham's Settled Estate* [1912] 2 Ch 75), or income tax or capital transfer tax (see *Re Fife's Settlement Trusts* [1922] 2 Ch 348), or costs of repairs (see *Re Kensington Settled Estates* (1905) 21 TLR 351). There should be included the income of invested capital money (see *Re De Teissier's Settled Estates* [1893] 1 Ch 153), the whole rental of the settled property (see *Re Lord Gerard's Settled Estate* [1893] 3 Ch 252, CA), and the rental value of settled property usually let but temporarily unlet, but not of land in the occupation of the tenant for life (see *Re Walker's Settled Estate* [1894] 1 Ch 189). The point of time to be taken in ascertaining the annual rental was the date when the scheme was approved by the trustees or the court (see *Re Fife's Settlement Trusts* supra), but now that no scheme has to be prepared and approved (see PARA 809 ante), it is submitted that the point of time will be the date of a binding contract for the execution of the work.

39 Settled Land Act 1925 Sch 3 Pt I para (xxv). As to the use of this power by a landowner under the Improvement of Land Act 1864, and as to the provisions of the Limited Owners Residences Act 1870, and the Limited Owners Residences Act (1870) Amendment Act 1871 see AGRICULTURAL LAND vol 1 (2008) PARA 619 et seq.

UPDATE

816-817 Improvements the costs of which are not liable to be replaced by instalments, Improvements the costs of which may be replaced by instalments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/817. Improvements the costs of which may be replaced by instalments.

817. Improvements the costs of which may be replaced by instalments.

The following are the improvements under Part II of the Third Schedule to the Settled Land Act 1925, the cost of which may be required by the trustees of the settlement or the court to be replaced by instalments¹:

- 149 (1) residential houses for land or mineral agents, managers, clerks, bailiffs, woodmen, gamekeepers and other persons employed on the settled land² or in connection with its management or development³;
- 150 (2) any offices⁴, workshops and other buildings of a permanent nature required in connection with the management or development of the settled land or any part of it⁵;
- 151 (3) the erection and building of dwelling houses, shops, buildings for religious, educational, literary, scientific or public purposes, market places, market houses, places of amusement and entertainment, gasworks, electric light or power works or any other works necessary or proper in connection with the development of the settled land or any part of it as a building estate⁶;
- 152 (4) restoration or reconstruction of buildings damaged or destroyed by dry rot⁷;
- 153 (5) structural additions⁸ to or alterations in buildings reasonably required, whether the buildings are intended to be let or not, or are already let⁹;
- 154 (6) boring for water and other preliminary works in connection with it¹⁰; and
- 155 (7) works specified as being required for properly maintaining a listed building of special architectural or historic interest¹¹.

1 The improvements listed are those contained in the Settled Land Act 1925 s 83, Sch 3 Pt II, which correspond with heads (1)-(6) in the text. As to repayment by instalments see PARA 812 ante. Improvements specified in the Agricultural Holdings Act 1986 s 64, Sch 7, are deemed to be authorised by the Settled Land Act 1925 s 83, Sch 3 Pt I (see the Agricultural Holdings Act 1986 s 89(1) (as amended), and their cost is not repayable: see AGRICULTURAL LAND vol 1 (2008) PARA 485.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 Settled Land Act 1925 Sch 3 Pt II para (i).

4 The erection of an estate office had already been allowed on other grounds (see *Re De Crespigny's Settled Estates* [1914] 1 Ch 227, CA): see PARAS 815 note 3, 816 text and note 26 ante.

5 Settled Land Act 1925 Sch 3 Pt II para (ii).

6 Ibid Sch 3 Pt II para (iii).

7 Ibid Sch 3 Pt II para (iv). This removes difficulties which were considered in *Re Legh's Settled Estate* [1902] 2 Ch 274.

8 The test whether a building is a structural addition is whether it forms with the principal house a whole or unit, not whether the new building is physically attached to the principal house: *Re Insole's Settled Estate* [1938] Ch 812, [1938] 3 All ER 406, CA.

9 Settled Land Act 1925 Sch 3 Pt II para (v). Cf Sch 3 Pt I para (xxiii) (see PARA 816 head (23) ante).

10 Ibid Sch 3 Pt II para (vi). As to the supply and distribution of water see Sch 3 Pt I paras (xiv), (xix); and PARA 816 heads (14), (19) ante.

11 This class of works is added by the Planning (Listed Buildings and Conservation Areas) Act 1990 s 87: see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1080. As to listed buildings generally see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) PARA 1072 et seq.

UPDATE

816-817 Improvements the costs of which are not liable to be replaced by instalments, Improvements the costs of which may be replaced by instalments

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/818. Improvements the costs of which must be replaced by instalments.

818. Improvements the costs of which must be replaced by instalments.

The following are the improvements under Part III of the Third Schedule to the Settled Land Act 1925, the costs of which the trustees and the court must require to be replaced by instalments¹:

- 156 (1) heating, hydraulic or electric power apparatus for buildings, and engines, pumps, lifts, rams, boilers, flues and other works required for use in connection with them²;
- 157 (2) engine houses, engines, gasometers, dynamos, accumulators, cables, pipes, wiring, switchboards, plant and other works required for the installation of electric, gas or other artificial light, in connection with any principal mansion house³, or other house or buildings, but not electric lamps, gas fittings or decorative fittings required in any such house or building⁴; and
- 158 (3) steam rollers, traction engines, motor lorries and movable machinery for farming or other purposes⁵.

1 See the Settled Land Act 1925 s 83, Sch 3 Pt III paras (i)-(iii). Improvements specified in the Agricultural Holdings Act 1986 s 64, Sch 7, are deemed to be authorised by the Settled Land Act 1925 s 83, Sch 3 Pt I (see the Agricultural Holdings Act 1986 s 89(1) (as amended), and their cost is not repayable: see AGRICULTURAL LAND vol 1 (2008) PARA 485. As to repayment by instalments see PARA 812 ante. As to the court's power to treat an income expense as a capital liability see PARA 671 ante.

2 Settled Land Act 1925 Sch 3 Pt III para (i).

3 As to the meaning of 'principal mansion house' see PARA 789 note 6 ante.

4 Settled Land Act 1925 Sch 3 Pt III para (ii).

5 Ibid Sch 3 Pt III para (iii).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/819. Interpretation of statutory improvements.

819. Interpretation of statutory improvements.

The Settled Land Act 1925 includes, with considerable additions, all the agricultural improvements enumerated in the Improvement of Land Act 1864¹, and the fact that an improvement has been sanctioned under the latter Act, as coming within a provision substantially identical with a provision of the Settled Land Act 1925, is good evidence that it is an improvement within the Settled Land Act 1925². The list has been interpreted by the courts with some liberality³, but those items which by the language employed are limited to works incidental to the use of the land itself as agricultural land will not be construed in a wider sense⁴.

1 See *Re Newton's Settled Estates* [1890] WN 24, CA. As to the improvements specified in the Improvement of Land Act 1864 s 9 see AGRICULTURAL LAND vol 1 (2008) PARA 620.

2 *Re Verney's Settled Estates* [1898] 1 Ch 508.

3 This appears evident from the cases in the footnotes to para 816 et seq ante; but where the Settled Land Act 1925 s 83, Sch 3 makes provision for the execution of work of a certain class, the court will regard itself as bound by it: see *Re Lord Gerard's Settled Estate* [1893] 3 Ch 252, CA.

4 See *Re Earl Harrington's Settled Estates* (1906) 75 LJ Ch 460, CA. Thus an engine house to supply electric light (*Re Lord Leconfield's Settled Estates* [1907] 2 Ch 340), or mills for commercial purposes (*Re Earl Harrington's Settled Estates* supra), were not allowed as improvements under an enactment which corresponded to the Settled Land Act 1925 Sch 3 Pt I para (xiii) (see PARA 816 head (13) ante). Provision is now made under Sch 3 Pt III para (ii) for works required for the installation of electric or other artificial light: see PARA 818 head (2) ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/820. Payment of expenses of improvements.

820. Payment of expenses of improvements.

The expenses of making any authorised improvement may be paid out of capital money under the Settled Land Act 1925¹, or they may be raised by legal mortgage on the security of the settled land or any part of it². A tenant for life who is entitled under the settlement to the whole income and enjoyment of the settled property during his life is under no obligation to account to the trustees for sums recovered by him by way of income tax allowances or reliefs referable to his expenditure on improvements³ to the settled land, notwithstanding that the expenditure has been recouped to him by the trustees of the settlement at his direction⁴. Where the costs of works of public improvement have been assessed on land, the landowner may apply to have these costs charged on the land as if the works had been improvements under the Improvement of Land Act 1864⁵. It would appear, moreover, that where such expenses have been charged by the local authority upon the settled land under statutory powers, the tenant for life is entitled to have them repaid out of capital⁶.

1 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

2 See the Settled Land Act 1925 ss 71(1) (as amended), 84; and PARAS 809-812 ante, 849-850 post. As to repayment of the costs of certain improvements out of income see PARA 812 ante.

3 The improvements were within *ibid* s 83, Sch 3 Pt I, and accordingly no part of their cost had to be recouped to capital by instalments: see PARA 812 ante.

4 *Re Pelly's Will Trusts, Ransome v Pelly* [1957] Ch 1, [1956] 2 All ER 326, CA. The decision in that case left open the question of what the position would be as regards income tax reliefs if the cost of the improvements had been paid for by the trustees direct to the contractors who did the work. See further PARA 808 note 23 ante.

5 See the Improvement of Land Act 1864 ss 57, 58; and AGRICULTURAL LAND vol 1 (2008) PARA 631. In effect this provision extends the scope of authorised improvements, although by an indirect method.

6 *Re Legh's Settled Estate* [1902] 2 Ch 274.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/821. Improvements and initial repairs to tenanted premises.

821. Improvements and initial repairs to tenanted premises.

Capital money arising under the Settled Land Act 1925¹ may be applied:

- 159 (1) in payment as for an improvement authorised by that Act of any money expended or costs incurred by a landlord under or in pursuance of Part I of the Landlord and Tenant Act 1927² in or about the execution of any improvement³;
- 160 (2) in payment of any sum due to a tenant in respect of compensation⁴ for an improvement and any costs, charges and expenses incidental to it⁵; and
- 161 (3) in payment of the costs, charges and expenses of opposing any proposal by a tenant to execute an improvement⁶. Similarly, capital money so arising may be applied in the payment of expenses incurred in carrying out certain initial repairs⁷.

1 For the meaning of 'capital money arising under the Act' see PARA 795 ante. Where the landlord liable to pay compensation for an improvement is a tenant for life or in a fiduciary position, he may require the sum payable as compensation, and any costs, charges and expenses incidental to it, to be paid out of any capital money held on the same trusts as the settled land; and in this provision, 'capital money' includes any personal estate held on the same trusts as the land: Landlord and Tenant Act 1927 s 13(3) (amended by the Landlord and Tenant Act 1954 s 45, Sch 7 Pt I; and by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4). For the meaning of 'tenant for life' under the Settled Land Act 1925 see PARA 671 note 5 ante.

2 Ie under the Landlord and Tenant Act 1927 Pt I (ss 1-17) (as amended) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 788 et seq): see s 13(1)(a).

3 Ibid s 13(1)(a).

4 Ie due under *ibid* Pt I: see s 13(1)(b) (as amended: see note 5 infra). As to the compensation payable under Pt I see ss 1-3 (s 1 as amended); and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 793 et seq. The satisfaction of a claim for compensation is included among the purposes for which a tenant for life or statutory owner may raise money under the Settled Land Act 1925 s 71 (as amended), ie by a legal mortgage: see the Landlord and Tenant Act 1927 s 13(2) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 4); and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 803. As to the power to mortgage settled land see PARAS 849-850 post.

5 Landlord and Tenant Act 1927 s 13(1)(b) (amended by the Landlord and Tenant Act 1954 Sch 7 Pt I).

6 Landlord and Tenant Act 1927 s 13(1)(c).

7 See the Landlord and Tenant Act 1954 s 8, Sch 2 para 6 (as amended); and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1219. The repairs referred to in the text are the repairs relating to premises let under long tenancies at low rents specified in s 8: see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1222. Capital money applied in respect of repairs is subject to the like provisions as if it were applied in respect of improvements under the Settled Land Act 1925 s 83, Sch 3 Pt II (see PARA 817 ante), and is therefore money which the trustees of the settlement or the court may require to be replaced by instalments: see the Landlord and Tenant Act 1954 Sch 2 para 6 proviso (see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 1219); and PARA 812 ante. As to the maintenance, repair and insurance of improvements see PARA 964 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/822. Redemption of improvement rentcharges.

822. Redemption of improvement rentcharges.

Capital money may be applied in the redemption of certain improvement rentcharges¹. Redemption here means the discharge of all instalments due or to become due, principal as well as interest, by the payment of a lump sum, as distinct from the mere payment of instalments as and when they become due². An improvement rentcharge for this purpose is a rentcharge, whether temporary or permanent, created at any time pursuant to an Act of Parliament, with the object of paying off any money advanced for defraying the expenses of an authorised³ improvement⁴, but a rentcharge created to repay capital money which a tenant for life is required to replace is not itself redeemable out of capital⁵. Recoupment of expenditure on improvements borne by a tenant for life but properly chargeable to capital may, it seems, be allowed in the absence of circumstances showing that recoupment was waived or that it would be inequitable⁶. The fact that the improved portion of the estate has been sold and that the rentcharge has been transferred to other portions is no objection to such an application of capital money⁷.

A payment made by a tenant for life to induce the original holders of charges to consent to a transfer of the charges by which the interest is reduced may not be repaid to him out of capital money⁸. When an improvement rentcharge has been redeemed out of capital money, the obligations of the tenant for life to maintain and insure⁹ apply to the improvement in respect of which the rentcharge was created¹⁰.

1 See the Settled Land Act 1925 s 73(1)(xiii); and PARA 808 ante.

2 *Re Sandbach* [1951] Ch 791 at 803, [1951] 1 All ER 971 at 977, CA, explaining *Re Lord Egmont's Settled Estates* (1890) 45 ChD 395, CA. Past payments by a tenant for life in respect of instalments, representing capital and interest, of loans for improvements, the payments being made as and when the instalments became due, may not be recouped out of capital money under the Settled Land Act 1925 s 73(1)(xiii); see *Re Sandbach* supra. The words 'or otherwise providing for the payment' of an improvement rentcharge, which were in the former enactment (see the Settled Land Acts (Amendment) Act 1887 s 1 (repealed)) and were the basis of the decision in *Re Lord Sudeley's Settled Estates* (1887) 37 ChD 123 that periodical payments of instalments in so far as consisting of capital, could be recouped, are not in the Settled Land Act 1925 s 73(1)(xiii).

3 Ie authorised by *ibid* s 83, Sch 3 Pt I (see PARA 816 ante): see s 73(1)(xiii). It is essential that the improvement should be of such a kind: see *Re Newton's Settled Estates* (1889) 61 LT 787; *Re Verney's Settled Estates* [1898] 1 Ch 508 at 511.

4 Settled Land Act 1925 s 73(1)(xiii).

5 See *ibid* s 85(1), (3); and PARAS 808, 813 ante. As to charging the inheritance with the cost of improvements authorised by the Settled Land Act 1925 Sch 3, pursuant to the Improvement of Land Act 1864 see AGRICULTURAL LAND vol 1 (2008) PARA 622.

6 See *Re Sandbach* [1951] Ch 791 at 806-807, [1951] 1 All ER 971 at 979, CA, where Jenkins LJ distinguished *Re Howard's Settled Estates* [1892] 2 Ch 233, *Re Dalison's Settled Estate* [1892] 3 Ch 522, and *Re Verney's Settled Estates* [1898] 1 Ch 508 as being related to the wording of the Settled Land Acts (Amendment) Act 1887 ss 1, 2 (repealed), which was different from that of the corresponding provisions of the Settled Land Act 1925: see note 2 supra. Similar considerations apply to *Re Marquis of Bristol's Settled Estates* [1893] 3 Ch 161 at 165.

7 *Re Howard's Settled Estates* [1892] 2 Ch 233.

8 *Re Verney's Settled Estates* [1898] 1 Ch 508.

9 As to the maintenance and insurance of improvements see PARA 964 post.

10 See the Settled Land Act 1925 s 88(6).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/823. Costs incurred by tenant for life.

823. Costs incurred by tenant for life.

The tenant for life is entitled to be paid out of capital money arising under the Settled Land Act 1925¹ the costs incurred but not recovered by him of an unsuccessful action by the remaindermen to prevent his exercising his statutory power of sale², and also the costs of a wholly or partially unsuccessful attempt to sell³. An estate agent's commission for procuring a building lease for a long term is payable out of capital money⁴, but commission on a short letting is an income charge which cannot be thrown on capital⁵. An architect's fees and solicitor's remuneration incurred in connection with a letting have been allowed out of capital⁶, but an intention to deal with portions of an estate does not enable a tenant for life to obtain out of capital money payment of the costs of making an elaborate survey of the whole estate⁷. The costs of obtaining the consent of a mortgagee of the life estate to a sale, although costs incidental to the exercise of the statutory power, ought not as a rule to be directed by the court to be paid out of capital money⁸, and the tenant for life must bear the cost of obtaining vacant possession of settled land, including the payment of compensation, for the purpose of executing an authorised improvement⁹.

1 As to the tenant for life see PARA 761 et seq ante. For the meaning of 'capital money arising under the Act' see PARA 795 ante.

2 *Re Llewellyn, Llewellyn v Williams* (1887) 37 ChD 317.

3 *Re Smith's Settled Estates* [1891] 3 Ch 65. As to the form of order for payment of costs of sale see *Re Rudd* [1887] WN 251. The trustees need not tax the costs of the tenant for life, but are entitled to an opportunity of considering the bills and deciding whether they will require them to be taxed: *Re Peel's Settled Estates* [1910] 1 Ch 389. As to costs see generally RSC Ord 62; as from 26 April 1999, CPR Pts 43-48; and CIVIL PROCEDURE.

4 *Re Maryon-Wilson's Settled Estates* [1901] 1 Ch 934.

5 *Re Leveson-Gower's Settled Estate* [1905] 2 Ch 95. See, however, *Re Watson, Brand v Culme-Seymour* [1928] WN 309.

6 *Re Watson, Brand v Culme-Seymour* [1928] WN 309.

7 *Re Eyton's Settled Estate* [1888] WN 254. Cf *Re Tubbs, Dykes v Tubbs* [1915] 2 Ch 137, CA.

8 *Sebright v Thornton* [1885] WN 176; *Countess Cardigan v Curzon-Howe* (1889) 41 ChD 375, CA. This is so whether the money is in court or held by the trustees: *Re Peel's Settled Estates* [1910] 1 Ch 389.

9 *Re Earl of De La Warr's Cooden Beach Settled Estate* [1913] 1 Ch 142, CA.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/824. Costs directed by the court to be paid out of capital money.

824. Costs directed by the court to be paid out of capital money.

The court¹, in its discretion, may order the costs, charges or expenses of all or any of the parties to any application to it under the Settled Land Act 1925² to be paid out of the settled property³. When the court directs that any costs, charges or expenses be paid out of property subject to a settlement⁴, then, subject to the court's direction, they are to be raised and paid (1) out of capital money arising under that Act⁵ or other money liable to be laid out in the purchase of land⁶ to be made subject to the settlement⁷; (2) out of securities⁸ representing such money, or out of income of any such money or securities⁹; (3) out of any accumulations of income of land, money or securities¹⁰; (4) by means of a sale of part of the settled land¹¹ in respect of which the costs, charges or expenses are incurred, or of other settled land comprised in the same settlement and subject to the same limitations¹²; or (5) by means of a legal mortgage¹³ of the settled land or any part of it to be made by such person as the court directs¹⁴, or partly in one of those modes and partly in another or others, or in any such other mode as the court thinks fit¹⁵.

- 1 As to the court see PARA 792 ante.
- 2 As to applications to the court see PARA 792 ante.
- 3 See the Settled Land Act 1925 s 113(8); and PARA 792 ante.
- 4 For the meaning of 'property' see PARA 778 note 7 ante; and for the meaning of 'settlement' see PARA 678 note 1 ante.
- 5 For the meaning of 'capital money arising under the Act' see PARA 795 ante.
- 6 For the meaning of 'land' see PARA 680 note 1 ante.
- 7 Settled Land Act 1925 s 114(a).
- 8 For the meaning of 'securities' see PARA 693 note 1 ante.
- 9 Settled Land Act 1925 s 114(b).
- 10 Ibid s 114(c).
- 11 For the meaning of 'settled land' see PARA 680 text to note 2 ante.
- 12 Settled Land Act 1925 s 114(d). For the meaning of 'limitation' see PARA 708 note 4 ante.
- 13 For the meaning of 'legal mortgage' see PARA 698 note 23 ante.
- 14 Settled Land Act 1925 s 114(e).
- 15 Ibid s 114.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(v) Repayment of Capital Money/825. Costs of protecting the settled land.

825. Costs of protecting the settled land.

If it thinks fit, the court¹ may approve of any action, defence, petition to Parliament, parliamentary opposition or other proceeding taken or proposed to be taken for the protection of settled land², or of any action or proceeding taken or proposed to be taken for the recovery of land being or alleged to be subject to a settlement³, and may direct that any costs, charges or expenses incurred or to be incurred in relation to it, or any part of it, be paid out of property subject to the settlement⁴. The tenant for life is not bound to obtain the court's sanction before commencing proceedings, but, if he does so without first obtaining the court's sanction, it is at the risk of having payment of his costs out of capital refused⁵.

The court has power under its general jurisdiction to order that money forming part of the settled estate and subject to a trust to be laid out in the purchase of land may be applied in repaying to the tenant for life the expenditure incurred in opposing a bill before Parliament⁶, or in an action to establish rights⁷.

1 As to the court see PARA 792 ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 In special circumstances this has been held to cover proceedings successfully prosecuted before the House of Lords to establish a claim to an earldom (see *Re Earl of Aylesford's Settled Estates* (1886) 32 ChD 162), a petition by the lord of a manor to the ecclesiastical courts for a new faculty (see *Re Mosley's Settled Estates* (1912) 56 Sol Jo 325), and surveying properties let and serving notices on the tenants (see *Re Tubbs, Dykes v Tubbs* [1915] 2 Ch 137, CA). For the meaning of 'land' see PARA 680 note 1 ante; and for the meaning of 'settlement' see PARA 678 ante.

4 Settled Land Act 1925 s 92.

5 *Re Yorke, Barlow v Yorke* [1911] 1 Ch 370. In *Re Wilkie's Settlement, Wade v Wilkie* [1914] 1 Ch 77, costs were allowed even though the proceedings had been abandoned.

6 *Re Ormrod's Settled Estate* [1892] 2 Ch 318. See, however, *Stanford v Roberts* (1882) 52 LJ Ch 50.

7 *Hamilton v Tighe* [1898] 1 IR 123.

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826. Devolution of capital money.

Capital money arising under the Settled Land Act 1925¹, while remaining uninvested or unapplied, and securities² on which an investment of any such capital money is made, are, for all purposes of disposition, transmission and devolution, treated as land³, and must be held for and go to the same persons successively, in the same manner and for and on the same estates, interests and trusts as the land from which the money arises would, if not disposed of, have been held and have gone under the settlement⁴, and the income of the securities must be paid or applied as the income of the land, if not disposed of, would have been payable or applicable under the settlement⁵. However, an appointee under a will of land does not become entitled to fines or premiums paid to the appointor in consideration of the granting of building leases by him⁶.

Securities on which an investment of capital money is made may be converted into money, which in turn is capital money arising under the Settled Land Act 1925⁷.

1 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

2 For the meaning of 'securities' see PARA 693 note 1 ante.

3 For the meaning of 'land' see PARA 680 note 1 ante.

4 Settled Land Act 1925 s 75(5). For the meaning of 'settlement' see PARA 678 note 1 ante. See also *Re Cartwright, Cartwright v Smith* [1939] Ch 90, [1938] 4 All ER 209, CA; *Re Cutcliffe's Will Trusts, Brewer v Cutcliffe* [1940] Ch 565, [1940] 2 All ER 297; *Re Armstrong's Will Trusts, Graham v Armstrong* [1943] Ch 400, [1943] 2 All ER 537. This provision does not effect a conversion of capital money into land for all purposes: *Re Midleton's Settlement, Lord Cottesloe and Loyd v A-G and Earl of Midleton* [1947] Ch 583 at 591-592, [1947] 2 All ER 134 at 137, CA (affd sub nom *Earl of Midleton v Baron Cottesloe* [1949] AC 418, [1949] 1 All ER 841, HL); *Bank of Ireland v Domvile* [1956] IR 37 at 57.

5 Settled Land Act 1925 s 75(6).

6 *Re Moses, Beddington v Beddington* [1902] 1 Ch 100, CA; affd sub nom *Beddington v Baumann* [1903] AC 13, HL.

7 See the Settled Land Act 1925 s 75(7).

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(vi) Powers of Sale and Exchange

827. Power of sale.

The tenant for life¹ may sell the settled land², or any part of it³, or any easement, right or privilege of any kind over or in relation to it⁴. This power is absolute, and may be exercised free from any restrictions on a power of sale given to the trustees by the settlement, or by a private Act of Parliament⁵. However, the purchase money must be paid to the trustees of the settlement or into court⁶.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante. As to the power to sell the principal mansion house see PARAS 789-790 ante. As to the notice to be given before a sale is made see PARA 783 ante.

3 The tenant for life is empowered to sell the subsoil without the surface: *Re Pearson's Will* (1900) 83 LT 626. As to the power to deal with the surface and minerals separately see PARA 856 post.

4 Settled Land Act 1925 s 38(i). As to the exercise of this power where persons together constituting the tenant for life disagree see PARA 793 ante. As to equitable interests in land see EQUITY vol 16(2) (Reissue) PARA 601 et seq.

5 *Wheelwright v Walker*(1883) 23 ChD 752; *Re Chaytor's Settled Estate Act*(1884) 25 ChD 651. As to the exercise by the tenant for life of powers given to the trustees see PARA 880 post.

6 See PARA 804 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vi) Powers of Sale and Exchange/828. Consideration for sale.

828. Consideration for sale.

Except in certain circumstances¹, every sale must be made either for the best consideration in money that can reasonably be obtained², or, where a rentcharge can still validly be created, in consideration wholly or partially of a perpetual rent, or a terminable rent³ consisting of principal and interest combined, payable yearly or half-yearly to be secured upon the land⁴ sold, or the land to which the easement, right or privilege sold is to be annexed in enjoyment or an adequate part of it⁵. It is a breach of duty for the tenant for life⁶ to enter into an agreement to sell for a price to be fixed by someone else, for example by an arbitrator⁷, except that timber on or fixtures attached to the land sold may be sold at a valuation⁸.

1 As to sale for less than the best price see PARA 831 post.

2 Settled Land Act 1925 s 39(1). See also *Wheelwright v Walker* (1883) 48 LT 867. A sale in consideration of consols has been held to be a sale for 'money': *Re Sutton's Contract* (1920) 65 Sol Jo 259. In granting authority to sell Scottish estates belonging to an English trust, the court in Scotland has held that it is inappropriate to include in its order the words 'provided every sale shall be made for the best consideration in money that can reasonably be obtained' as being a provision from a system of land tenure alien to Scotland: *Campbell's Petition* 1958 SC 275. As to options to purchase see PARA 871 post.

3 For the meaning of 'rent' see PARA 801 note 1 ante. As to perpetual or terminable rents see also RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 787.

4 For the meaning of 'land' see PARA 680 note 1 ante.

5 Settled Land Act 1925 s 39(2). Subject to certain exceptions, a rentcharge can no longer be created: see the Rentcharges Act 1977 s 2 (as amended); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 751.

6 As to the tenant for life see PARA 761 et seq ante.

7 *Re Earl of Wilton's Settled Estates* [1907] 1 Ch 50 at 55. However, the tenant for life may in certain circumstances delegate his powers: see PARA 776 ante.

8 See the Settled Land Act 1925 s 49(2); and PARA 832 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vi) Powers of Sale and Exchange/829. Sale in consideration of rent.

829. Sale in consideration of rent.

If a sale is made in consideration of a rent¹ certain conditions must be observed.

- 162 (1) The rent² reserved on any such sale must be the best rent that can reasonably be obtained, regard being had to any money paid as part of the consideration, or laid out, or to be laid out, for the benefit of the settled land³, and generally to the circumstances of the case, but a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable during any period not exceeding five years from the date of the conveyance⁴.
- 163 (2) Where there is a terminable rent, the conveyance must distinguish the part attributable to principal (which is capital money arising under the Settled Land Act 1925⁵) and that attributable to interest⁶. Unless the part of the terminable rent attributable to interest varies according to the amount of the principal repaid, the trustees of the settlement⁷ must during the subsistence of the rent, accumulate the income of the capital money in the way of compound interest by investing it and the resulting income in securities⁸ authorised for the investment of capital money and must add the accumulations to capital⁹.
- 164 (3) The conveyance must contain a covenant by the purchaser¹⁰ for the payment of the rent, and the statutory powers and remedies for the recovery of the rent will apply¹¹, and the conveyance must be framed as a subsidiary vesting deed¹².
- 165 (4) A duplicate of the conveyance must be executed by the purchaser and delivered to the tenant for life or statutory owner¹³, of which execution and delivery the execution of the conveyance by the tenant for life or statutory owner is sufficient evidence¹⁴.
- 166 (5) A statement, contained in the conveyance or in an indorsement on it, signed by the tenant for life or statutory owner, respecting any matter of fact or of calculation under the Settled Land Act 1925 in relation to the sale is, in favour of the purchaser and those claiming under him, sufficient evidence of the matter stated¹⁵.

1 As to the prohibition on creating a rentcharge see PARA 828 note 5 ante.

2 For the meaning of 'rent' see PARA 801 note 1 ante.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 Settled Land Act 1925 s 39(3). For the meaning of 'conveyance' see PARA 698 note 12 ante.

5 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

6 Settled Land Act 1925 s 39(2). See also PARA 828 ante.

7 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

8 For the meaning of 'securities' see PARA 693 note 1 ante.

9 Settled Land Act 1925 s 39(2) proviso.

10 For the meaning of 'purchaser' see PARA 702 note 12 ante.

11 Settled Land Act 1925 s 39(4)(i) (amended by the Law of Property (Amendment) Act 1926 s 7, Schedule). As to the statutory powers and remedies for recovery of the rent see the Law of Property Act 1925 s 121 (as amended); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 865 et seq.

12 See the Settled Land Act 1925 s 10(1), (3); and PARA 691 ante.

13 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

14 Settled Land Act 1925 s 39(4)(ii).

15 Ibid s 39(4)(iii).

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830. Sale to statutory company.

The consideration on a sale to any company incorporated by special Act of Parliament¹, or by provisional order confirmed by Parliament or by any other order, scheme or certificate having the force of an Act of Parliament, may, with the consent of the tenant for life², consist, wholly or in part, of fully-paid securities³ of any description of the company; such securities must be vested in the trustees of the settlement⁴ and will be subject to the provisions of the Settled Land Act 1925 relating to securities representing capital money arising under that Act⁵, and may be retained and held by the trustees in like manner as if they had been authorised by that Act for the investment of capital money⁶.

1 This provision does not apply to companies registered under the Companies Act 1985, or any of the Acts which it replaced (see COMPANIES vol 14 (2009) PARA 24 et seq), or to companies incorporated by royal charter (see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1128 et seq). As to companies incorporated by authority of Parliament see CORPORATIONS vol 9(2) (2006 Reissue) PARA 1143 et seq.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 For the meaning of 'securities' see PARA 693 note 1 ante.

4 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

5 For the meaning of 'capital money arising under the Act' see PARA 795 ante. As to the modes of application of capital money see PARA 808 ante.

6 Settled Land Act 1925 s 39(5).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vi) Powers of Sale and Exchange/831. Sale for less than best price or rent.

831. Sale for less than best price or rent.

A sale for less than the best price or rent¹ may be made only in the following cases.

- 167 (1) A tenant for life² has a restricted power to make a grant in fee simple or absolutely for a nominal price or rent³, or for less than the best price or rent that can reasonably be obtained, of any part of the settled land⁴, for certain public and charitable purposes⁵.
- 168 (2) If land⁶ is sold for the purpose of the erection on such land of small dwellings⁷, or to a county council for the purposes of smallholdings⁸, the sale may be made for such consideration in money or land, or in land and money, or may reserve such rent, as having regard to such purposes and to all the circumstances of the case, is the best that can reasonably be obtained, notwithstanding that a better consideration or rent might have been obtained if the land were sold, exchanged or leased for another purpose⁹.
- 169 (3) For the purpose of the erection of dwellings for the working classes¹⁰, or the provision of gardens to be held with them¹¹ or for the purpose of the Small Holdings and Allotments Acts 1908 to 1931¹², a tenant for life may make a grant in fee simple or absolutely of any part of the settled land, with or without any easement, right or privilege of any kind over or in relation to the settled land or any part of it, for a nominal price or rent, or for less than the best price or rent that can reasonably be obtained or gratuitously¹³, but, except under a court order¹⁴, not more than two acres in the case of land situate in a district, or ten acres in the case of land situate in a parish, in any one parish may be granted under this power, unless the full consideration be paid or reserved in respect of the excess¹⁵.
- 170 (4) A tenant for life has a restricted power to make a grant in fee simple or absolutely of certain water rights to any statutory authority for a nominal price or rent, or for less than the best price or rent that can reasonably be obtained¹⁶.

All money, not being rent, received on the exercise of any of these powers is capital money arising under the Settled Land Act 1925¹⁷.

1 As to the consideration for sale or rent generally see PARA 828 ante. As to the prohibition on creating a rentcharge see PARA 828 note 5 ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 For the meaning of 'rent' see PARA 801 note 1 ante.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

5 See the Settled Land Act 1925 s 55(1); and PARA 864 post. As to grants to the National Trust see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 993.

6 For the meaning of 'land' see PARA 680 note 1 ante.

7 Settled Land Act 1925 s 57(1)(a). For the meaning of 'small dwellings' see PARA 816 note 30 ante.

8 See ibid s 57(1)(b).

9 Ibid s 57(1). See also AGRICULTURAL LAND vol 1 (2008) PARAS 523, 527. As to county councils see the Local Government Act 1972 s 1; and LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq.

10 As to the phrase 'working classes' see PARA 775 note 8 ante.

11 Settled Land Act 1925 s 57(2)(a).

12 Ibid s 57(2)(b). As to the Small Holdings and Allotments Acts 1908 to 1931 and the Acts amending them see AGRICULTURAL LAND vol 1 (2008) PARA 510 et seq.

13 See the Settled Land Act 1925 s 57(2).

14 As to the court see PARA 792 ante.

15 See the Settled Land Act 1925 s 57(2) proviso; and the Local Government Act 1972 ss 1(10), 179 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 579). See also AGRICULTURAL LAND vol 1 (2008) PARAS 523, 527.

16 See the Settled Land Act 1925 s 54(1); and PARA 868 post.

17 See ibid ss 54(4), 55(2), 57(3). For the meaning of 'capital money arising under the Act' see PARA 795 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vi) Powers of Sale and Exchange/832. Mode of sale.

832. Mode of sale.

A sale may be made in one lot or in several lots¹, and either by auction or by private contract, and may be made subject to any stipulations respecting title, or evidence of title, or other things². The tenant for life may fix reserve biddings, and buy in at an auction³.

A sale may also be made subject to a stipulation that all or any of the timber⁴ on the land sold, or any fixtures⁵, are to be taken by the purchaser⁶ at a valuation, and the amount of the valuation forms part of the price of the land and is capital money accordingly⁷. If on a sale the consideration attributable to any timber or fixtures is by mistake paid to a tenant for life or other person not entitled to receive it, then, if that person or the purchaser or the persons deriving title under either of them subsequently pay the consideration, with such interest, if any, on it as the court⁸ may direct, to the trustees of the settlement⁹ or other persons entitled to it, or into court¹⁰, the court may, on the application¹¹ of the purchaser or the persons deriving title under him, declare that the disposition is to take effect as if the whole of the consideration had at its date been duly paid to the trustees of the settlement or other persons entitled to receive it¹². The person not entitled to receive it to whom the consideration is paid, and his estate and effects, remain liable to make good any loss attributable to the mistake¹³.

1 A tenant for life selling lands held under a fee farm grant was held entitled to sell in lots, carrying out the sales by making sub-fee farm grants or long leases to the respective purchasers: *Re Braithwaite's Settled Estate* [1922] 1 IR 71. As to fee farm see REAL PROPERTY vol 39(2) (Reissue) PARA 5.

2 Settled Land Act 1925 s 39(6). If the sale is by lots, the tenant for life is vendor in relation to each of the contracts into which he eventually enters, and there is no objection in principle to his solicitors giving him notice before the sale that on all sales under a certain amount they will not make scale charges, but will make detailed charges: *Re Peel's Settled Estates* [1910] 1 Ch 389. As to sale of land generally see SALE OF LAND. As to sales by persons in a fiduciary position see TRUSTS vol 48 (2007 Reissue) PARA 1041 et seq; POWERS.

3 Settled Land Act 1925 s 39(7). For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante. As to reserve biddings see AUCTION vol 2(3) (Reissue) PARA 242.

4 Ie any of the timber and other trees, pollards, tellers, underwood, saplings and plantations on the land sold: see *ibid* s 49(2). For the meaning of 'land' see PARA 680 note 1 ante.

5 Ie any articles attached to the land: see *ibid* s 49(2).

6 For the meaning of 'purchaser' see PARA 702 note 12 ante.

7 Settled Land Act 1925 s 49(2). See also PARA 848 post. As to capital money arising under the Act see PARA 795 ante.

8 As to the court see PARA 792 ante.

9 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

10 As to the payment of money into court see PARA 798 note 8 ante.

11 As to applications to the court see PARA 792 ante.

12 Settled Land Act 1925 s 49(3). As to the effect of receipts of trustees see PARA 785 ante. As to the confirmation of past transactions see also PARA 876 post.

13 *Ibid* s 49(3).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vi) Powers of Sale and Exchange/833. Power to leave part of purchase money on mortgage.

833. Power to leave part of purchase money on mortgage.

On a sale of land for an estate in fee simple or for a term having at least 500 years to run by a tenant for life or statutory owner¹, the tenant for life or statutory owner on behalf of the trustees of the settlement², where the proceeds are liable to be invested, may contract that the payment of any part, not exceeding two-thirds, of the purchase money is to be secured by a charge by way of legal mortgage or a mortgage by demise or sub-demise for a term of at least 500 years (less a nominal reversion when by sub-demise), of the land sold, with or without the security of any other property, such charge or mortgage, if any buildings are comprised in the mortgage, to contain a covenant by the mortgagor to keep them insured against loss or damage by fire to their full value³. The trustees are bound to give effect to such contract made by the tenant for life or statutory owner⁴.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante; definitions applied by the Trustee Act 1925 s 68(1) PARA (15).

2 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante; definition applied by ibid s 68(1) PARA (15).

3 Trustee Act 1925 s 10(2) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4).

4 Trustee Act 1925 s 10(2) (as amended: see note 3 supra).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vi) Powers of Sale and Exchange/834. Power of exchange.

834. Power of exchange.

A tenant for life¹ may make an exchange of the settled land², or any part of it, or of any easement right or privilege of any kind, whether or not newly created over or in relation to the settled land, or any part of it, for other land³, or for any easement, right or privilege of any kind, whether or not newly created, over or in relation to other land, including an exchange in consideration of money paid for equality of exchange⁴. Land may be acquired on an exchange to be made subject to a settlement, notwithstanding that the land is subject to any Crown rent, quit rent, chief rent or other incident of tenure, or to any easement, right or privilege, or to any restrictive covenant, or to any liability to maintain or repair walls, fences, sea walls, river banks, dykes, roads, streets, sewers or drains, or to any improvement rentcharge which is capable under the Settled Land Act 1925 of being redeemed out of capital money⁵. Settled land in England or Wales may not be given in exchange for land out of England or Wales⁶. An exchange may be made subject to any stipulations respecting title, or evidence of title, or other things⁷.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante. As to the power to exchange the principal mansion house see PARAS 789-791 ante. As to the notice to be given before an exchange is made see PARA 783 ante.

3 In *Duke of Westminster's Settled Estates, Duke of Westminster v Earl of Shaftesbury* [1921] 1 Ch 585 at 596 Sargent J suggested that the words 'other land' would preclude an exchange for a further interest in land already comprised in the settlement. In view of the meaning of 'land' in the Settled Land Act 1925 (see PARA 680 note 1 ante) it is submitted that this view is no longer correct.

4 Ibid s 38(iii). As to exchange generally see REAL PROPERTY vol 39(2) (Reissue) PARA 240 et seq.

5 See ibid s 74(1); and PARA 808 head (11) ante. As to what improvement rentcharges are capable of being redeemed out of capital money see PARA 822 ante. As to Crown rent, quit rent and chief rent see REAL PROPERTY vol 39(2) (Reissue) PARA 84.

6 Ibid s 40(3).

7 Ibid s 40(2).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vi) Powers of Sale and Exchange/835. Consideration for exchange.

835. Consideration for exchange.

Every exchange must be made for the best consideration in land¹, or in land and money, that can reasonably be obtained², unless land is given in exchange for the purpose of the erection on the land so given of small dwellings³, or to a county council for the purposes of smallholdings, in which case the exchange may be made for such consideration in money or land, or in land and money, as having regard to those purposes and to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a better consideration might have been obtained if the land were sold, exchanged or leased for another purpose⁴.

1 For the meaning of 'land' see PARA 680 note 1 ante. Leaseholds having less than 60 years to run may not be taken in exchange: *Re Duke of Westminster's Settled Estates, Duke of Westminster v Earl of Shaftesbury* [1921] 1 Ch 585.

2 Settled Land Act 1925 s 40(1). As to the prohibition on creating a rentcharge see PARA 828 note 5 ante.

3 For the meaning of 'small dwellings' see PARA 816 note 30 ante.

4 See the Settled Land Act 1925 s 57(1); the Local Government Act 1972 s 1; and PARA 831 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vi) Powers of Sale and Exchange/836. Conveyance of land acquired on exchange.

836. Conveyance of land acquired on exchange.

Where land is acquired in exchange for settled land, the land must be conveyed to the tenant for life or statutory owner¹, the conveyance being framed as a subsidiary vesting deed².

1 As to the tenant for life or statutory owner see PARA 761 et seq ante.

2 See the Settled Land Act 1925 s 10(1); and PARA 691 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vii) Power to grant and accept Leases/837. Power to lease.

(vii) Power to grant and accept Leases

837. Power to lease.

A tenant for life¹ has statutory power to lease the settled land², or any part of it³, or any easement, right or privilege of any kind over or in relation to it⁴, for any purpose whatever, whether involving waste or not⁵, for a term not exceeding⁶: (1) in the case of a building lease 999 years⁷; (2) in the case of a mining lease 100 years⁸; (3) in the case of a forestry lease 999 years⁹; and (4) in the case of any other lease 50 years¹⁰. Failure to comply with the statutory requirements may render void a lease granted in purported exercise of the statutory power, but a tenant for life may be bound by it to the extent of his beneficial interest¹¹.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante. As to the power to lease the principal mansion house see PARAS 789-791 ante.

3 As to the power to lease the surface of the settled land reserving the mines and minerals see PARA 856 post.

4 A right to lessees of mines during the continuance of their lease so to work the mines as to let down or damage the surface of the land is the lease of an easement, right or privilege over the settled land: *Sitwell v Earl of Londesborough*[1905] 1 Ch 460; *IRC v New Sharlston Collieries Co Ltd*[1937] 1 KB 583, [1937] 1 All ER 86, CA.

5 As to waste see PARA 986 et seq post.

6 Settled Land Act 1925 s 41.

7 Ibid s 41(i). As to building leases see PARA 842 post.

8 Ibid s 41(ii). As to mining leases see PARA 843 post.

9 Ibid s 41(iii). As to forestry leases see PARA 845 post.

10 Ibid s 41(iv). For the meaning of 'lease' see PARA 685 note 13 ante.

11 See PARA 883 post; and POWERS.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vii) Power to grant and accept Leases/838. Extent of statutory power of leasing.

838. Extent of statutory power of leasing.

The leasing power of a tenant for life¹ extends to the making of: (1) a lease² for giving effect to a contract entered into by a predecessor in title for making a lease, and which, if made by that predecessor, would have been valid against his successors in title³; (2) a lease for giving effect (in such manner and so far as the law permits) to a covenant of renewal, performance of which could be enforced against the owner for the time being of the settled land⁴; and (3) a lease for confirming, as far as may be, a previous lease being void or voidable, but so that every lease, as and when confirmed, is such a lease as might at the date of the original lease have been lawfully granted under the Settled Land Act 1925 or otherwise, as the case may require⁵.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'lease' see PARA 685 note 13 ante.

3 See the Settled Land Act 1925 ss 63, 117(1)(v). Under this provision a tenant for life can grant a lease with such terms and having exactly the same effect as if it had been granted by the settlor, a valid contract having been made by the settlor (owner in fee): see *Re Kemeys-Tynte, Kemeys-Tynte v Kemeys-Tynte* [1892] 2 Ch 211.

4 Settled Land Act 1925 s 43(i). For the meaning of 'settled land' see PARA 680 text to note 2 ante. As to covenants for renewal see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 538-542.

5 *Ibid* s 43(ii). As to the effect of leases not authorised by statutory or express powers see PARA 883 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vii) Power to grant and accept Leases/839. Statutory requirements for leases.

839. Statutory requirements for leases.

Every lease¹ must be by deed, and must be made to take effect in possession² not later than 12 months after its date³, or in reversion after an existing lease having not more than seven years to run at the date of the new lease⁴, unless the new lease is for a term that does not extend beyond three years at the best rent that can be reasonably obtained without fine and does not exempt the lessee from punishment for waste⁵, in which case it may be made by writing under hand only containing an agreement instead of a covenant by the lessee for payment of rent⁶.

Except in certain circumstances⁷, every lease must reserve the best rent that can reasonably be obtained⁸, regard being had to any fine taken⁹, and to any money laid out, or to be laid out, for the benefit of the settled land¹⁰, and generally to the circumstances of the case¹¹. A lease may be made partly in consideration of the lessee having executed or agreeing to execute, on the land leased, an improvement authorised by the Settled Land Act 1925¹² for or in connection with mining purposes¹³. Every lease must contain a covenant by the lessee for payment¹⁴ of the rent, and a condition of re-entry on the rent not being paid within a time specified in it, not exceeding 30 days¹⁵.

A counterpart of every lease must be executed by the lessee and delivered to the tenant for life or statutory owner¹⁶, of which execution and delivery the execution of the lease by the tenant for life or statutory owner is sufficient evidence¹⁷.

Failure to observe these conditions may render the lease void at law, although it may have a limited effect in equity¹⁸.

A tenant for life may not grant a lease of the settled property together with other property of which he is absolute owner without providing for apportionment of the rent¹⁹.

A tenant for life cannot grant a lease to himself, either alone or jointly with others²⁰.

1 For the meaning of 'lease' see PARA 685 note 13 ante.

2 For the meaning of 'possession' see PARA 761 note 3 ante.

3 As to the validity in equity of a lease granted to take effect more than 12 months after its date see *Kisch v Hawes Bros Ltd* [1935] Ch 102 (overruled on another point in *Warner v Sampson* [1959] 1 QB 297, [1959] 1 All ER 120, CA); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 144-145.

4 Settled Land Act 1925 s 42(1)(i). If a lease is surrendered and a new lease granted without an underlease being surrendered, the new lease takes effect in possession: *Re Grosvenor Settled Estates, Duke of Westminster v McKenna* [1932] 1 Ch 232.

5 As to the extent of a tenant's liability for waste see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 434.

6 Settled Land Act 1925 s 42(5)(ii). For the meaning of 'rent' see PARA 801 note 1 ante.

7 As to the exceptions see PARA 841 post.

8 Rent includes a reservation in kind: Co Litt 142a; *Campbell v Leach* (1775) Amb 740 at 748; *R v Earl of Pomfret* (1816) 5 M & S 139 at 143; *Re Moody and Yates' Contract* (1885) 30 ChD 344 at 346-347, CA. If money is paid to the tenant for life to induce him to grant a lease, the rent reserved by the lease so granted cannot be considered as the best rent, even if there is no evidence that a better rent could have been obtained: *Chandler v Bradley* [1897] 1 Ch 315; *Re Handman and Wilcox's Contract* [1902] 1 Ch 599, CA. The rent must be one which is legally recoverable: *Pumford v W Butler & Co Ltd* [1914] 2 Ch 353.

9 For the meaning of 'fine' see PARA 801 note 1 ante. A fine received on any grant of a lease under the statutory powers is capital money arising under the Settled Land Act 1925 (s 42(4)), and must be paid to the trustees of the settlement or into court (see PARA 804 ante). As to fines arising on the renewal of a lease see PARA 859 post. As to capital money see PARA 795 ante.

10 These words refer to money to be laid out under an obligation imposed by the transaction of lease on the tenant, and do not include voluntary past expenditure by him: see *Re Chawner's Settled Estates* [1892] 2 Ch 192.

11 Settled Land Act 1925 s 42(1)(ii). See also *Dowager Duchess of Sutherland v Duke of Sutherland* [1893] 3 Ch 169 at 195; *Re Aldam's Settled Estates* [1902] 2 Ch 46 at 59. The onus is on anyone alleging that the best rent has not been given to prove that fact: *Davies v Hall* [1954] 2 All ER 330, [1954] 1 WLR 855, CA. As to the protection of the lessee see PARAS 840, 885-886 post.

12 As to the improvements authorised by the Settled Land Act 1925 see PARA 815 et seq ante.

13 Ibid s 45(2). As to mining leases see PARA 843 post.

14 For the meaning of 'payment' in relation to rent see PARA 801 note 1 ante.

15 Settled Land Act 1925 s 42(1)(iii). A condition of re-entry need not be inserted in a lease where it is not appropriate (see *Sitwell v Earl of Londesborough* [1905] 1 Ch 460), and this provision may not apply to leases for less than three years (*Davies v Hall* [1954] 2 All ER 330 at 334, [1954] 1 WLR 855 at 860, CA). An outrageous omission of covenants might be evidence of fraud: see *Davies v Davies* (1888) 38 ChD 499. As to re-entry for non-payment of rent see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 603 et seq.

16 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante.

17 Settled Land Act 1925 s 42(2). As to the lease and counterpart see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 114.

18 See PARA 883 post; and POWERS.

19 *Re Rycroft's Settlement, Rycroft v Rycroft* [1962] Ch 263, [1961] 3 All ER 581.

20 *Boyce v Edbrooke* [1903] 1 Ch 836. The same result continues to apply, notwithstanding the Law of Property Act 1925 s 82 (see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 264), as the tenant for life is a trustee of the settled land (see PARA 767 ante). See also *Rye v Rye* [1962] AC 496, [1962] 1 All ER 146, HL. However, the trustees of the settlement can now grant a lease to the tenant for life: see PARA 879 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vii) Power to grant and accept Leases/840. Statements in leases or indorsements.

840. Statements in leases or indorsements.

A statement, whether contained in a lease¹ or in an indorsement on a lease, signed by the tenant for life or statutory owner² respecting any matter of fact or of calculation under the Settled Land Act 1925 in relation to the lease is, in favour of the lessee and those claiming under him, sufficient evidence of the matter stated³.

1 For the meaning of 'lease' see PARA 685 note 13 ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante.

3 Settled Land Act 1925 s 42(3). This refers to any statement that the rent reserved is the best rent (see s 42(1)(ii); and PARA 839 ante), or as to apportionment of rents on a contract for lease in lots (see s 44(3) (as amended); and PARA 842 post), or as to the value of the lessee's interest in a surrendered lease (see s 52(5); and PARA 859 post). A lessee cannot rely on such a statement if he has reason to believe that it is incorrect: cf *Re Duce and Boots Cash Chemists (Southern) Ltd's Contract* [1937] Ch 642, [1937] 3 All ER 788.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vii) Power to grant and accept Leases/841. Leases at less than the best rent.

841. Leases at less than the best rent.

The following are the only cases in which a lease may be made at less than the best rent.

- 171 (1) A tenant for life¹ has a restricted power to lease any part of the settled land² for any term of years absolute³ for a nominal rent⁴, or for less than the best rent that can reasonably be obtained, for certain public and charitable purposes⁵.
- 172 (2) If land is leased for the purpose of the erection on such land of small dwellings⁶, or to a county council for the purposes of smallholdings, the lease may reserve such rent as, having regard to such purposes and to all the circumstances of the case, is the best that can reasonably be obtained, notwithstanding that a better consideration or rent might have been obtained if the land were sold, exchanged or leased for another purpose⁷.
- 173 (3) For the purpose of the erection of dwellings for the working classes⁸, or the provision of gardens to be held with them, or for the purpose of the Small Holdings and Allotments Acts 1908 to 1931⁹, a tenant for life may grant a lease for any term of years absolute of any part of the settled land, with or without any easement, right or privilege of any kind over or in relation to the settled land or any part of it, for a nominal rent, or for less than the best rent that can reasonably be obtained or gratuitously, but, except under a court order¹⁰, not more than two acres in the case of land situate in a district, or 10 acres in the case of land situate in a parish, in any one parish may be leased under this power unless the full consideration is paid or reserved in respect of the excess¹¹.
- 174 (4) A tenant for life has a restricted power to grant a lease for any term of years absolute of certain water rights to any statutory authority for a nominal rent, or for less than the best rent that can reasonably be obtained or gratuitously¹².

All money, not being rent, received on the exercise of any of the above powers is capital money arising under the Settled Land Act 1925¹³.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 For the meaning of 'term of years absolute' see PARA 678 note 13 ante.

4 For the meaning of 'rent' see PARA 801 note 1 ante.

5 See the Settled Land Act 1925 s 55(1); and PARA 864 post.

6 For the meaning of 'small dwellings' see PARA 816 note 30 ante.

7 See the Settled Land Act 1925 s 57(1); the Local Government Act 1972 s 1; and PARA 831 ante.

8 As to the phrase 'working classes' see PARA 775 note 8 ante.

9 As to the Small Holdings and Allotments Acts 1908 to 1931 and the Acts amending them see AGRICULTURAL LAND vol 1 (2008) PARA 510 et seq.

10 As to the court see PARA 792 ante.

11 See the Settled Land Act 1925 s 57(2); and the Local Government Act 1972 ss 1(10), 179 (see see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 579). See also AGRICULTURAL LAND vol 1 (2008) PARAS 523, 527.

12 See the Settled Land Act 1925 s 54(1); and PARA 868 post.

13 See *ibid* ss 54(4), 55(2), 57(3); and PARA 831 ante. For the meaning of 'capital money arising under the Act' see PARA 795 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vii) Power to grant and accept Leases/842. Building leases.

842. Building leases.

Every building lease¹ must be made partly in consideration of the lessee, or some person by whose direction the lease is granted, or some other person, having erected² or agreeing to erect buildings, new or additional, or having improved or repaired or agreeing to improve or repair³ buildings, or having executed, or agreeing to execute, on the land⁴ leased an authorised improvement for or in connection with building purposes⁵. A peppercorn or a nominal or other rent⁶ less than the rent ultimately payable may be made payable for the first five years, or any less part of the term⁷.

Where the land is contracted to be leased in lots, the entire amount of rent to be ultimately payable may be apportioned among the lots in any manner⁸. However, the annual rent reserved by any lease must not be less than 50p⁹. The total amount of the rents reserved on all leases for the time being granted must not be less than the total amount of the rents which, in order that the leases may conform with the statutory requirements, ought to be reserved in respect of the whole land for the time being leased¹⁰, and the rent reserved by any lease must not exceed one-fifth of the full annual value of the land comprised in that lease with the buildings on it when completed¹¹.

1 'Building lease' means a lease for any building purposes or purposes connected with building purposes: Settled Land Act 1925 s 117(1)(i). For the meaning of 'building purposes' see PARA 808 note 44 ante; and for the meaning of 'lease' see PARA 685 note 13 ante. See also *Re Earl of Ellesmere* [1898] WN 18. A lease may be a building lease if it contains a covenant by the lessee to rebuild existing buildings when it becomes necessary, but without prescribing any definite time within which the rebuilding is to be carried out or begun: *Re Grosvenor Settled Estates, Duke of Westminster v McKenna* [1933] Ch 97.

2 These words do not include the case of a past voluntary expenditure by the lessee: see *Re Chawner's Settled Estates* [1892] 2 Ch 192. See also PARA 839 note 10 ante.

3 These words include an agreement to lay out a fixed sum in improvements and repairs (see *Re Daniell's Settled Estates* [1894] 3 Ch 503, CA), and appear to include a lease by which the tenant covenants to do all necessary repairs (see *Truscott v Diamond Rock Boring Co* (1882) 20 ChD 251, CA).

4 For the meaning of 'land' see PARA 680 note 1 ante.

5 Settled Land Act 1925 s 44(1). As to authorised improvements see PARA 815 et seq ante.

6 For the meaning of 'rent' see PARA 801 note 1 ante.

7 Settled Land Act 1925 s 44(2).

8 Ibid s 44(3). However, it seems that a lease may be an improper exercise of the power, although it conforms to these provisions: see *Re Sabin's Estates* [1885] WN 197. Without leave of the court (see PARAS 671 ante, 844 post) a tenant for life cannot enter into an agreement for leasing the land in lots if the rent cannot be apportioned under these provisions: *Re Rycroft's Settlement, Rycroft v Rycroft* [1962] Ch 263, [1961] 3 All ER 685.

9 See the Settled Land Act 1925 s 44(3) proviso (i) (amended by the Decimal Currency Act 1969 s 10(1)).

10 Settled Land Act 1925 s 44(3) proviso (ii).

11 Ibid s 44(3) proviso (iii).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vii) Power to grant and accept Leases/843. Mining leases.

843. Mining leases.

In a mining lease¹ the rent² may be made to be ascertainable by or to vary according to the acreage worked³, or by or according to the quantities of any mineral or substance gotten⁴, made merchantable, converted, carried away⁵ or disposed of, in or from the settled land⁶, or any other land⁷, or by or according to any facilities⁸ given in that behalf⁹. The rent may also be made to vary according to the price of the minerals or substances gotten, or any of them, and such price may be the saleable value, or the price or value appearing in any trade or market or other price list or return from time to time, or may be the marketable value as ascertained in any manner prescribed by the lease, including a reference to arbitration, or may be an average of any such prices or values taken during a specified period¹⁰. A fixed¹¹ or minimum rent¹² may be made payable, with or without power for the lessee, in case the rent, according to acreage or quantity or otherwise, in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent¹³. The execution by the lessee of an improvement may be part of the consideration¹⁴.

Unless a contrary intention¹⁵ is expressed in the settlement¹⁶, part of the rent¹⁷ under a mining lease, whether the mines or minerals leased are already opened or in work or not¹⁸, must be set aside as capital money arising under the Settled Land Act 1925¹⁹, that is, if the tenant for life or statutory owner is impeachable for waste²⁰ in respect of minerals, three-quarters of the rent and otherwise one-quarter, and the residue of the rent is applicable as rents and profits²¹.

1 'Mining lease' means a lease for any mining purposes or purposes connected with them, and includes a grant or licence for any mining purposes: Settled Land Act 1925 s 117(1)(xv). For the meaning of 'mining purposes' see PARA 808 note 36 ante; and for the meaning of 'lease' see PARA 685 note 13 ante. It may include surface land necessary for the effective working of minerals: see *Re Reveley's Settled Estates* (1863) 32 LJ Ch 812. For the meaning of 'mines and minerals' see PARA 680 note 1 ante.

2 For the meaning of 'rent' see PARA 801 note 1 ante.

3 If the lease reserves a royalty or rent per acre worked, that rent is then called 'acreage royalty' or 'acreage rent', and the acreage may be measured horizontally or along the inclination of the seam. The acre may be a statute acre, or a customary acre, eg Cheshire acre. As to mining royalties see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 323 et seq.

4 Eg per ton, in which case the rent or royalty is known as a 'tonnage rent' or 'tonnage royalty'. The number of pounds per ton is usually specified.

5 Where a right of wayleave or shaft-leave is granted, the rent may be based on the acreage of mineral carried over the way or brought up the shaft, or may be based on the quantity in tons so carried or brought. As to wayleave royalties see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 335.

6 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

7 The words 'other land' refer to minerals worked by outstroke from the settled land. As to the meaning of 'outstroke' see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 331.

8 Eg by means of wayleaves: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 258-259.

9 Settled Land Act 1925 s 45(1)(i).

10 Ibid s 45(1)(ii). Rents are sometimes reserved according to the selling price of the minerals, and the proportion of the selling price often varies with the selling price and is not a fixed proportion. Such rents are sometimes known as 'sliding-scale royalties'.

11 The words 'fixed rent' are sometimes used as synonymous with 'minimum' or 'dead' rent. Sometimes a fixed rent only is reserved, irrespective of the quantity of mineral gotten, but the more usual practice is to reserve a fixed or minimum or dead rent coupled with and merging into royalties, the fixed or minimum or dead rent being either a rent according to acreage of surface over the minerals (eg £1 per acre), or a rent proportionate to the expected annual royalties, so as to produce to the lessor a certain fixed annual sum whether mineral is worked or not, and so as also to operate to compel the lessee to work in order to avoid payment of rent for nothing but the right to work. As to such rents see further MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 333.

12 See note 11 supra. The minimum rent need not commence immediately, and may increase year by year during the earlier years of the term, and the lease may contain a proviso, where the circumstances warrant it, for cesser of the minimum rent when all the minerals demised or so much of them as are workable have been paid for at the royalty rate, and may also reserve a wayleave rent for minerals brought through the demised mines from other land after such cesser, at a nominal rent: *Re Aldam's Settled Estate* [1902] 2 Ch 46, CA.

13 Settled Land Act 1925 ss 45(1)(iii). It is usual to insert in mining leases a power to the lessee, in case the minimum rent paid in any year or half-year exceeds the royalty value of the minerals actually worked, to recoup such excess out of royalties otherwise payable in excess of minimum rent in any subsequent year or half-year of the term. As to covenants to pay rent and royalties in mining leases generally see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 336-338.

14 See ibid s 45(2); and PARA 839 ante.

15 As to what will amount to the expression of a contrary intention see *Re Duke of Newcastle's Estates* (1883) 24 ChD 129; *Re Bagot's Settlement, Bagot v Kittoe* [1894] 1 Ch 177 at 184; *Re Daniels, Weeks v Daniels* [1912] 2 Ch 90; *Re Rayer, Rayer v Rayer* [1913] 2 Ch 210; *Re Hanbury's Settled Estates* [1913] 2 Ch 357. Cf *Re Royal Victoria Pavilion, Ramsgate, Whelan v FTS (Great Britain) Ltd* [1961] Ch 581, [1961] 3 All ER 83. An express power to grant a mining lease, coupled with a provision that the tenant for life is to take the rents and profits, constitutes sufficient expression of contrary intention: see *Re Arkwright's Settlement, Phoenix Assurance Co Ltd v Arkwright* [1945] Ch 195 at 211, [1945] 1 All ER 404 at 414 per Romer J.

16 For the meaning of 'settlement' see PARA 678 note 1 ante.

17 As to the application, as between capital and income, of compensation paid in respect of mines acquired under the Coal Act 1938 see PARA 944 post.

18 As to the distinction between open and unopened mines see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 7-11.

19 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

20 A tenant for life, even if not expressly made unimpeachable for waste, may work open mines, and if he grants a lease of such mines only one-quarter of the rents need be set aside (*Re Chaytor* [1900] 2 Ch 804), and the position is the same even if the lease was granted by a predecessor and the mines are not opened until after he becomes tenant for life in possession (*Re Fitzwalter, Wright v Plumtre* [1943] Ch 285, [1943] 2 All ER 328, CA). A person entitled until sale to the income of land held upon trust for sale is in the position of tenant for life impeachable for waste: *Re Ridge, Hellard v Moody* (1885) 31 ChD 504, CA. As to the liability of a tenant for life for waste see PARA 986 et seq post. As to the working of mines and the doctrine of waste in relation to limited owners see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 371-378.

21 See the Settled Land Act 1925 s 47. This provision does not apply to a lease for giving effect to the contract of a predecessor in title who was absolutely entitled (see *Re Kemeys-Tynte, Kemeys-Tynte v Kemeys-Tynte* [1892] 2 Ch 211; and PARA 947 post), or to a lease granted by a tenant for life under an express power in the settlement (see *Earl Lonsdale v Lowther* [1900] 2 Ch 687). Where land is settled subject to a mining lease already granted, the rights of the tenant for life are governed either by the terms of the settlement or by the law as to open mines: see *Re Hall, Hall v Hall* [1916] 2 Ch 488; and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 371 et seq. Where the term of a lease is extended under the Settled Land Act 1925 s 59(1) (see PARA 860 post), the tenant for life is not deprived of his right, if any, to the entire rent during the period of the original term: *Re Bruce, Brudenell v Brudenell* [1932] 1 Ch 316; *Re Arkwright's Settlement, Phoenix Assurance Co Ltd v Arkwright* [1945] Ch 195, [1945] 1 All ER 404. Apart from the provisions of the Settled Land Act 1925, the produce of mines, whether royalties or otherwise, belongs to the tenant for life: see *Daly v Beckett* (1857) 24 Beav 114 at 123. See further PARA 947 post; and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 372.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vii) Power to grant and accept Leases/844. Variation of statutory terms or conditions for building or mining leases.

844. Variation of statutory terms or conditions for building or mining leases.

If it is shown to the court¹ with respect to the district in which any settled land² is situated either that it is the custom for land³ in the district to be leased for building or mining purposes⁴ for a longer term, or on other conditions than the statutory term or conditions specified in that behalf⁵, or that it is difficult to make leases for building or mining purposes of land in it, except for a longer term or on other conditions than the statutory term or conditions specified in that behalf⁶, the court may, if it thinks fit, authorise generally the tenant for life or statutory owner⁷ to make from time to time leases of or affecting the settled land in that district or parts of it for any term⁸ or on any conditions as expressed in the order of the court, or may, if it thinks fit, authorise the tenant for life or statutory owner to make any such lease in any particular case⁹. The tenant for life or statutory owner and, subject to any direction in the order to the contrary, each of his successors in title, being a tenant for life or statutory owner, may then make in any case, or in the particular case, a lease of the settled land, or part of it, in conformity with the order¹⁰.

1 As to the court see PARA 792 ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 For the meaning of 'land' see PARA 680 note 1 ante.

4 For the meaning of 'building purposes' see PARA 808 note 44 ante; and for the meaning of 'mining purposes' see PARA 808 note 36 ante. For the meaning of 'lease' see PARA 685 note 13 ante.

5 Settled Land Act 1925 s 46(1)(i). As to the statutory terms and conditions see PARAS 837, 842-843 ante.

6 Ibid s 46(1)(ii).

7 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of statutory owner see PARA 766 note 6 ante.

8 See *Re O'Connell's Estate* [1903] 1 IR 154, where a building lease of 500 years was sanctioned under a previous similar provision at a time when the normal maximum term for such leases of settled land was only 99 years. As to the present normal maximum terms for buildings or mining leases see PARA 837 ante.

9 Settled Land Act 1925 s 46(1). As to a more general power for the court to sanction transactions affecting settled land see PARA 671 ante.

10 Ibid s 46(2).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vii) Power to grant and accept Leases/845. Forestry leases.

845. Forestry leases.

Where there is a forestry lease¹ a peppercorn rent, or a nominal or other rent² less than the rent ultimately payable, may be made payable for the first ten years or any less part of the term³. The rent may be made to be ascertainable by or to vary according to the value of the timber⁴ on the land comprised in the lease, or the produce of it, which may during any year be cut, converted, carried away or otherwise disposed of⁵. A fixed or minimum rent may be made payable, with or without power for the lessee, in case the rent according to value in any specified period does not produce an amount equal to the fixed or minimum rent, to make up the deficiency in any subsequent specified period, free of rent other than the fixed or minimum rent⁶. Any other provisions may be made for the sharing of the proceeds or profits of the user of the land between the reversioner and the Minister of Agriculture, Fisheries and Food⁷.

1 As respects England, 'forestry lease' means a lease to the Minister of Agriculture, Fisheries and Food for any purpose for which he is authorised to acquire land by the Forestry Act 1967: see the Settled Land Act 1925 s 117(1)(x); the Forestry Act 1967 ss 49(1), 50, Sch 6 para 5; and FORESTRY vol 52 (2009) PARA 45. For the meaning of 'lease' see PARA 685 note 13 ante. As to the position with respect to Wales see FORESTRY vol 52 (2009) PARAS 2, 45. As to the Minister of Agriculture, Fisheries and Food see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

2 For the meaning of 'rent' see PARA 801 note 1 ante.

3 Settled Land Act 1925 s 48(1)(i).

4 'Timber' includes all forest products: *ibid* s 48(2).

5 *Ibid* s 48(1)(ii).

6 *Ibid* s 48(1)(iii).

7 *Ibid* s 48(1)(iv); Forestry Act 1967 Sch 6 para 5. See also note 1 supra.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vii) Power to grant and accept Leases/846. Power to accept leases.

846. Power to accept leases.

A tenant for life¹ may accept a lease² of any land, or of any mines and minerals³, or of any easement, right or privilege, convenient to be held or worked with or annexed in enjoyment to the settled land⁴, or any part of the settled land, for such period, and upon such terms and conditions, as the tenant for life thinks fit⁵, but no fine may be paid out of capital money⁶ in respect of the lease⁷. The lease may contain an option to purchase the reversion expectant on the term granted by it⁸. The lease must be granted to the tenant for life or statutory owner, and will be deemed a subsidiary vesting deed⁹, and the statements and particulars required in the case of subsidiary vesting deeds must either be inserted in it or indorsed on it¹⁰.

- 1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.
- 2 For the meaning of 'lease' see PARA 685 note 13 ante. The tenant for life may accept an extended lease under the Leasehold Reform Act 1967: see s 6(2) (see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1416); and PARA 877 post.
- 3 For the meaning of 'land' and 'mines and minerals' see PARA 680 note 1 ante.
- 4 For the meaning of 'settled land' see PARA 680 text to note 2 ante.
- 5 Settled Land Act 1925 s 53(1).
- 6 As to capital money arising under the Settled Land Act 1925 see PARA 795 ante. For the meaning of 'fine' see PARA 801 note 1 ante.
- 7 Settled Land Act 1925 s 53(1) proviso. It would seem that, unlike the case of a lease which is to be acquired with capital money (see PARA 808 head (12) ante), a lease may be acquired under this provision even if it has less than 60 years unexpired and that the consent of the court need not be obtained.
- 8 Ibid s 53(3). As to options to purchase in a lease see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 135-138.
- 9 For the meaning of 'statutory owner' see PARA 766 note 6 ante. For the meaning of 'subsidiary vesting deed' see PARA 691 text to notes 8, 16 ante.
- 10 Settled Land Act 1925 s 53(2). As to the statements and particulars required in the case of subsidiary vesting deeds see PARA 691 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(vii) Power to grant and accept Leases/847. Power to procure variation of leases, grants and covenants.

847. Power to procure variation of leases, grants and covenants.

If the settled land¹ or any part of it is held or derived under a lease², or under a grant reserving rent³, or subject to covenants, agreements or conditions, whether that lease or grant comprises other land⁴ or not, and whenever such lease or grant was made⁵, the tenant for life⁶ may at any time by deed, with or without giving or taking any consideration in money or otherwise⁷, procure the variation, release, waiver or modification, either absolutely or otherwise, of the terms, covenants, agreements or conditions contained in the lease or grant, in respect of the whole or any part of the settled land comprised in it, including the apportionment of any rent, covenants, agreements, conditions and provisions reserved, created by or contained in the lease or grant⁸.

1 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

2 For the meaning of 'lease' see PARA 685 note 13 ante.

3 For the meaning of 'rent' see PARA 801 note 1 ante.

4 For the meaning of 'land' see PARA 680 note 1 ante.

5 See the Settled Land Act 1925 s 60(3).

6 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

7 'Consideration in money or otherwise' means: (1) a capital sum of money or a rent; (2) land being freehold or leasehold for any term of years of which not less than 60 years are unexpired; (3) any easement, right or privilege over or in relation to the settled land, or any part of it, or any other land; (4) the benefit of any restrictive covenant or condition; and (5) the release of the settled land, or any part of it, or any other land, from any easement, right or privilege, including a right of pre-emption, or from the burden of any restrictive covenant or condition affecting the same: Settled Land Act 1925 s 61(2). As to the payment of consideration other than rent in respect of transactions effected under this power see s 61(1); and PARA 863 post.

8 Ibid s 60(2).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(viii) Powers as regards Timber/848. Power to cut timber.

(viii) Powers as regards Timber

848. Power to cut timber.

Where a tenant for life¹ is impeachable for waste in respect of timber², and there is on the settled land³ timber ripe and fit for cutting, then, on obtaining the consent of the trustees of the settlement⁴ or a court order⁵, the tenant for life may cut and sell that timber or any part of it⁶.

Three-quarters of the net proceeds of the sale must be set aside as and be capital money arising under the Settled Land Act 1925⁷, and the other quarter goes as rents and profits⁸.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 As to the rights of a tenant for life generally to cut down timber see PARAS 964, 988 et seq post. As to the meaning of 'timber' see FORESTRY vol 52 (2009) PARA 54; as to felling licences see FORESTRY vol 52 (2009) PARA 120 et seq; and as to compensation payable to the trustees see FORESTRY vol 52 (2009) PARA 138.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

5 As to the court see PARA 792 ante.

6 Settled Land Act 1925 s 66(1). As to the cutting of timber planted as an improvement see s 88(2); and PARAS 964, 994 post. As to the cutting of timber for executing authorised improvements see s 89; and PARA 794 ante. As to the cutting of timber during minority see s 102(2)(a); and PARA 665 ante.

7 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

8 Settled Land Act 1925 s 66(2). See also PARAS 990-992 post. On a sale of the estate with the timber where the price of the timber is to be ascertained at a valuation, the amount of the valuation must be considered as capital money: *Re Llewellyn, Llewellyn v Williams*(1887) 37 ChD 317. Cf *Re Earl of Londesborough, Spicer v Earl of Londesborough*[1923] 1 Ch 500. See also PARA 832 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(ix) Power to Mortgage/849. Purposes for which mortgage may be made.

(ix) Power to Mortgage

849. Purposes for which mortgage may be made.

By a legal mortgage¹ on the security of the settled land² or of any part of it, the tenant for life³ may raise money required for⁴:

- 175 (1) discharging an incumbrance⁵ on the settled land or part of it⁶;
- 176 (2) paying for any improvement authorised by the Settled Land Act 1925⁷ or by the settlement⁸;
- 177 (3) equality of exchange⁹;
- 178 (4) redeeming a compensation rentcharge in respect of the extinguishment of manorial incidents and affecting the settled land¹⁰;
- 179 (5) commuting any additional rent¹¹ made payable on the conversion of a perpetually renewable leasehold interest into a long term¹²;
- 180 (6) satisfying any claims for compensation on the conversion of a perpetually renewable leasehold interest into a long term by any officer, solicitor or other agent of the lessor in respect of fees or remuneration which would have been payable by the lessee or underlessee on any renewal¹³;
- 181 (7) paying the costs of any of the foregoing transactions¹⁴ or of shifting any incumbrance¹⁵, or of varying the provisions of an incumbrance or charging by way of additional security or consolidation¹⁶;
- 182 (8) satisfying any claim under the Landlord and Tenant Act 1927 for compensation for an improvement¹⁷;
- 183 (9) paying a coast protection charge or expenses incurred in carrying out work under a works scheme under the Coast Protection Act 1949¹⁸;
- 184 (10) paying certain expenses and making certain payments under the Landlord and Tenant Act 1954 in respect of repairs to a dwelling house¹⁹;
- 185 (11) paying expenses incurred in, or in connection with, proceedings relating to the acquisition of the freehold or an extended lease under the Leasehold Reform Act 1967²⁰; or
- 186 (12) paying compensation to a tenant where rights under the Leasehold Reform Act 1967 are excluded²¹.

The money so raised is capital money for the purpose, and may be paid or applied accordingly²².

1 For the meaning of 'legal mortgage' see PARA 698 note 23 ante. See also MORTGAGE vol 77 (2010) PARA 104.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante. As to the power to mortgage the principal mansion house see PARAS 789-791 ante.

3 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

4 See the Settled Land Act 1925 s 71(1). 'Required' does not mean absolutely necessary, but reasonably required having regard to the circumstances of the settled land: see *Re Clifford, Scott v Clifford*[1902] 1 Ch 87; *Re Bruce, Halsey v Bruce*[1905] 2 Ch 372 at 376.

5 For these purposes, 'incumbrance' does not include any annual sum payable only during a life or lives, or during a term of years absolute or determinable: Settled Land Act 1925 s 71(2). For the meaning of 'term of years absolute' see PARA 678 note 13. 'Incumbrance' does include the expenses of making up a street or of other works which have become a charge on the settled land under the Highways Act 1980 ss 212, 305 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 161, 923); see *Re Smith's Settled Estates*[1901] 1 Ch 689; *Re Pizzi, Scrivener v Aldridge*[1907] 1 Ch 67. As to whether a trust for accumulation is an incumbrance see *Re Strangways, Hickley v Strangways*(1886) 34 ChD 423, CA; *Re Woodhouse, Annesley v Woodhouse*[1898] 1 IR 69.

6 Settled Land Act 1925 s 71(1)(i).

7 As to improvements authorised by the Settled Land Act 1925 see PARA 815 et seq ante. The purposes authorised by s 71 (as amended) as purposes for which money may be raised by mortgage include the payment of compensation under the Agricultural Tenancies Act 1995 s 16: see s 33(2) (as amended); and AGRICULTURAL LAND vol 1 (2008) PARA 311. A mortgage to the Agriculture Mortgage Corporation Ltd, which was incorporated in pursuance of the Agricultural Credits Act 1928, may provide that the loan secured by it is to be repayable by equal yearly or half-yearly instalments of capital and interest spread over a period not exceeding 60 years, or repayable on such other terms as may be authorised by the memorandum or articles of that company: see the Agricultural Credits Act 1932 s 3(1) (repealed with a saving in relation to mortgages subsisting on 25 September 1991: see the Agriculture and Forestry (Financial Provisions) Act 1991 s 1(3)); and AGRICULTURAL LAND vol 1 (2008) PARA 636.

8 Settled Land Act 1925 s 71(1)(ii). For the meaning of 'settlement' see PARA 678 note 1 ante.

9 Ibid s 71(1)(iii). As to exchange see REAL PROPERTY vol 39(2) (Reissue) PARA 240 et seq.

10 Ibid s 71(1)(vi). As to the extinguishment of manorial incidents see CUSTOM AND USAGE vol 12(1) (Reissue) PARA 643.

11 For the meaning of 'rent' see PARA 801 note 1 ante.

12 Settled Land Act 1925 s 71(1)(vii). As to commuting additional rent see the Law of Property Act 1922 s 145, Sch 15 paras 14 (as amended), 15, 17(1), (4) (as amended); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 541-542. See also PARA 978 post.

13 Settled Land Act 1925 s 71(viii). See the Law of Property Act 1922 Sch 15 paras 15, 17(2) and note 12 supra.

14 Ie under the Settled Land Act 1925 s 71(1)(i)-(viii): see s 71(1)(ix).

15 Ie under ibid s 69 (see PARA 851 post): see s 71(1)(ix).

16 Ie under ibid s 70 (see PARA 855 post): see s 71(1)(ix). As to raising costs on mortgage by court order see PARA 824 ante. As to the power to make any disposition (which includes a mortgage) to give effect to a contract entered into by a predecessor in title see PARA 876 post.

17 See the Landlord and Tenant Act 1927 s 13(2) (as amended); and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 803. As to claims for compensation for improvements see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 788 et seq.

18 See the Coast Protection Act 1949 s 11(2)(a) (as amended); and WATER AND WATERWAYS vol 101 (2009) PARA 544.

19 See the Landlord and Tenant Act 1954 s 8, Sch 2 para 6 (as amended); and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1219.

20 See the Leasehold Reform Act 1967 s 6(2), (3), (5) (as amended); and PARA 877 post.

21 Ie under ibid ss 17, 18 (as amended): see Sch 2 para 9 (as amended); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1493.

22 See the Settled Land Act 1925 s 71(1); and notes 17-21 supra. As to the payment of capital money see PARA 804 ante; and as to its application see PARA 808 ante.

UPDATE

849 Purposes for which mortgage may be made

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(ix) Power to Mortgage/850. How the power may be exercised.

850. How the power may be exercised.

The mortgage may be of the settled land or any part of it, and may be given over the entire property, even if the incumbrance to be discharged affects only a part¹, but a tenant for life is not justified in trying to preserve a heavily incumbered estate by mortgaging it if by doing that he sacrifices the interest of existing incumbrancers upon it². The statutory restrictions on the leasing powers of a tenant for life³ do not apply in relation to a mortgage term created under the Settled Land Act 1925⁴.

1 *Hampden v Earl of Buckinghamshire* [1893] 2 Ch 531, CA; *Re Lord Monson's Settled Estates* [1898] 1 Ch 427; *Re Coull's Settled Estates* [1905] 1 Ch 712.

2 *Hampden v Earl of Buckinghamshire* [1893] 2 Ch 531, CA.

3 As to the power of leasing see PARA 837 et seq ante. For the meaning of 'tenant for life' see PARA 671 note 5 ante.

4 Settled Land Act 1925 s 71(3). As to the purposes for which mortgage may be raised see PARA 849 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(x) Power to Shift and Vary Incumbrances/851. Power to shift incumbrances.

(x) Power to Shift and Vary Incumbrances

851. Power to shift incumbrances.

Where there is an incumbrance¹ affecting any part of the settled land² (whether capable of being overreached on the exercise by the tenant for life³ of his statutory powers or not⁴) then, with the consent of the incumbrancer, the tenant for life may charge that incumbrance on any other part of the settled land, or on all or any part of the capital money or securities⁵ representing capital money subject or to become subject to the settlement⁶, whether already charged with it or not, in exoneration of the first-mentioned part, and, by a legal mortgage⁷ or otherwise, make provision accordingly⁸.

1 This includes an improvement rentcharge, as to which see PARA 852 post.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

4 These words within parentheses accord with the earlier decision in *Re Knight's Settled Estates*[1918] 1 Ch 211. As to overreaching equitable interests see PARAS 705-706 ante, 874 post.

5 For the meaning of 'securities' see PARA 693 note 1 ante.

6 For the meaning of 'settlement' see PARA 678 note 1 ante.

7 For the meaning of 'legal mortgage' see PARA 698 note 23 ante.

8 Settled Land Act 1925 s 69. Incumbrances, at any rate such as might lawfully be discharged out of capital money, might on a sale be discharged by the method provided by the Law of Property Act 1925 s 50: see SALE OF LAND vol 42 (Reissue) PARA 268.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(x) Power to Shift and Vary Incumbrances/852. Exoneration by agreement of land improvement rentcharges.

852. Exoneration by agreement of land improvement rentcharges.

The incumbrances which may be shifted under the statutory power¹ include an improvement rentcharge under the Improvement of Land Act 1864, or the Acts amending or extending it². The consent of the Minister of Agriculture, Fisheries and Food³ is not required for this purpose, but the new charge does not take priority over existing incumbrances in the way that a charge created by an absolute order of the minister does⁴.

1 As to the statutory power see PARA 851 ante.

2 *Re Earl of Strafford and Maples* [1896] 1 Ch 235, CA. As to improvement rentcharges see PARA 822 ante. The Rentcharges Act 1977 s 2 (as amended), does not prohibit the creation of a rentcharge under any Act of Parliament providing for the creation of rentcharges in connection with the execution of works on land, whether by way of improvements or otherwise, or the commutation of any obligation to do any such work: see s 2(3)(d); and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 774.

3 As to the Minister of Agriculture, Fisheries and Food see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437.

4 *Re Earl of Strafford and Maples* [1896] 1 Ch 235, CA. As to the effect of a charge created by absolute order see AGRICULTURAL LAND vol 1 (2008) PARA 624 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(x) Power to Shift and Vary Incumbrances/853. Land acquired as substituted security.

853. Land acquired as substituted security.

Land¹ acquired by purchase or in exchange or otherwise under the powers of the Settled Land Act 1925 may be made a substituted security for any charge from which the settled land² or any part of it has already been released on the occasion and in order to complete a sale, exchange or other disposition³. However, where a charge⁴ does not affect the whole of the settled land, the land acquired may not be subjected to it unless that land is acquired either by purchase with money arising from the sale of land which was before the sale subject to the charge, or by an exchange of land which was before the exchange subject to the charge⁵.

1 For the meaning of 'land' see PARA 680 note 1 ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 Settled Land Act 1925 s 82(1). For the meaning of 'disposition' see PARA 685 note 14 ante. As to exchange see REAL PROPERTY vol 39(2) (Reissue) PARAS 240-242.

4 'Charge' is not limited to charges existing in priority to the settlement: see *Re Lord Stamford's Settled Estates* (1889) 43 ChD 84 at 94.

5 Settled Land Act 1925 s 82(1) proviso. Land purchased with money arising from the sale of heirlooms settled to devolve with land subject to a charge does not become subject to the charge affecting the settled land: *Re Duke of Marlborough and Governors of Queen Anne's Bounty* [1897] 1 Ch 712. As to the protection of the person conveying by direction of the tenant for life see PARA 890 post. As to settlements of personality to devolve with realty see PARA 937 et seq post. As to exchange see REAL PROPERTY vol 39(2) (Reissue) PARAS 240-242.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(x) Power to Shift and Vary Incumbrances/854. Power to exonerate from capital and annual sums.

854. Power to exonerate from capital and annual sums.

On a sale or other disposition¹ or dealing under the powers of the Settled Land Act 1925, the whole or any part of any capital or annual sum (and in the case of an annual sum whether temporary or perpetual) charged on or payable out of the land² disposed of, or any part of it, and other land subject to the settlement³, may, as between the tenant for life or statutory owner⁴ and his successors in title and the other party and persons deriving title under or in succession to him (but without prejudice to the rights of the person entitled to that capital or annual sum), be charged exclusively on the land disposed of, or any part of it, or such other land, or any part of it, in exoneration of the rest of the land on or out of which the capital or annual sum is charged or payable⁵.

1 For the meaning of 'disposition' see PARA 685 note 14 ante.

2 For the meaning of 'land' see PARA 680 note 1 ante.

3 For the meaning of 'settlement' see PARA 678 note 1 ante.

4 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

5 Settled Land Act 1925 s 49(1)(c).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(x) Power to Shift and Vary Incumbrances/855. Power to vary incumbrances.

855. Power to vary incumbrances.

If an incumbrance¹ affects any part of the settled land², the tenant for life³ may, with the incumbrancer's consent, vary the rate of interest charged and any of the other provisions of the instrument, if any, creating the incumbrance, and with the like consent charge that incumbrance on any part of the settled land, whether already charged with it or not, or on all or any part of the capital money or securities⁴ representing capital money subject or to become subject to the settlement, by way of additional security, or of consolidation of securities, and, by a legal mortgage⁵ or otherwise, make provision accordingly⁶.

1 For these purposes, 'incumbrance' includes any annual sum payable during a life or lives or during a term of years absolute or determinable, but in any such case an additional security may be effected only so as to create a charge or security similar to the original charge or security: Settled Land Act 1925 s 70(2). For the meaning of 'term of years absolute' see PARA 678 note 13 ante.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

4 For the meaning of 'securities' see PARA 693 note 1 ante.

5 For the meaning of 'legal mortgage' see PARA 698 note 23 ante.

6 Settled Land Act 1925 s 70(1).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/856. Power to deal with surface and minerals separately.

(xi) Miscellaneous Powers

856. Power to deal with surface and minerals separately.

A sale, exchange, lease or other authorised disposition¹ may be made either of land², with or without an exception or reservation of all or any of the mines and minerals³ in it, or of any mines and minerals, and in any such case with or without a grant or reservation of powers of working, wayleaves⁴ or rights of way, rights of water and drainage and other powers, easements, rights or privileges for or incident to, or connected with mining purposes⁵, in relation to the settled land⁶, or any part of it, or any other land⁷.

1 For the meaning of 'lease' see PARA 685 note 13 ante; and for the meaning of 'disposition' see PARA 685 note 14 ante. As to exchange see REAL PROPERTY vol 39(2) (Reissue) PARAS 240-242.

2 For the meaning of 'land' see PARA 680 note 1 ante.

3 For the meaning of 'mines and minerals' see PARA 680 note 1 ante.

4 This enables the grant of a wayleave for foreign coal. In respect of such a wayleave no separate rent need be reserved and, if the circumstances of the particular case justify it, it may be granted for only a nominal rent after the cesser of the minimum rent required by a mining lease: see *Re Aldam's Settled Estate*[1902] 2 Ch 46, CA. See also *Re Lord Wallace's Settled Estates* [1869] WN 66. As to wayleaves generally see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 257-258, 335.

5 For the meaning of 'mining purposes' see PARA 808 note 36 ante.

6 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

7 Settled Land Act 1925 s 50.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/857. Power to create easements and impose restrictions.

857. Power to create easements and impose restrictions.

On a sale or other disposition¹ or dealing under the statutory powers:

- 187 (1) any easement, right or privilege of any kind may be reserved or granted over or in relation to the settled land², or any part of it, or other land³, including the land disposed of, and, in the case of an exchange, the land taken in exchange⁴; and
188 (2) any restriction with respect to building on or other user of land, or with respect to mines and minerals⁵, or with respect to or for the purpose of the more beneficial working of it, or with respect to any other thing, may be imposed and made binding, as far as the law permits, by covenant, condition or otherwise, on the tenant for life or statutory owner⁶ and the settled land or any part of it, or on the other party and any land disposed of to him⁷.

- 1 For the meaning of 'disposition' see PARA 685 note 14 ante.
- 2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.
- 3 For the meaning of 'land' see PARA 680 note 1 ante.
- 4 Settled Land Act 1925 s 49(1)(a). As to exchange see REAL PROPERTY vol 39(2) (Reissue) PARAS 240-242.
- 5 For the meaning of 'mines and minerals' see PARA 680 note 1 ante.
- 6 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.
- 7 Settled Land Act 1925 s 49(1)(b).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/858. Power to enlarge residue of long terms.

858. Power to enlarge residue of long terms.

A tenant for life or statutory owner¹ has power to enlarge the residue of a long term into a fee simple in the same manner and subject to the same restrictions as an absolute owner².

1 See PARA 761 et seq ante.

2 See the Law of Property Act 1925 s 153(1), (6) (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARAS 108-111.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/859. Power to accept surrenders of leases and regrants.

859. Power to accept surrenders of leases and regrants.

A tenant for life¹ may accept, with or without consideration, a surrender of any lease² of settled land³, whether made under the statutory power⁴ or not, or a regrant of any land granted in fee simple⁵, whether under the statutory power⁶ or not, in respect of the whole land leased or granted, or any part of it, with or without an exception of all or any of the mines and minerals⁷ in it, or in respect of mines and minerals, or any of them, and with or without an exception of any easement, right or privilege of any kind over or in relation to the land surrendered or regranted⁸.

On a surrender of a lease or a regrant of land granted in fee simple, in respect of part only of the land or mines or minerals leased or granted, the rent or rentcharge may be apportioned⁹. On a surrender or regrant, the tenant for life may in relation to the land or mines and minerals surrendered or regranted, or of any part of it, make a new or other lease, or grant in fee simple, or new or other leases, or grants in fee simple, in lots¹⁰. The new or other lease or grant in fee simple may comprise additional land or mines and minerals, and may reserve any apportioned or other rent or rentcharge¹¹, but it must conform with the statutory requirements¹². A regrant must be made to the tenant for life or statutory owner¹³, and will be deemed a subsidiary vesting deed¹⁴, and the statements and particulars required in the case of subsidiary vesting deeds must be inserted in it¹⁵. On a surrender or regrant, and the making of a new or other lease, whether for the same or for any extended or other term, or of a new or other grant in fee simple, and whether or not subject to the same or to any other covenants, provisions or conditions, the value of the lessee's or grantee's interest in the lease surrendered or the land regranted may be taken into account in the determination of the amount of the rent or rentcharge to be reserved, and of any fine¹⁶ or consideration in money to be taken, and of the nature of the covenants, provisions and conditions to be inserted in the new or other lease or grant in fee simple¹⁷.

All money, not being rent or a rentcharge, received on the exercise by the tenant for life of the above power is capital money arising under the Settled Land Act 1925¹⁸ unless the court¹⁹, on an application made within six months after its receipt or within such further time as the court may in special circumstances allow, otherwise directs²⁰.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'lease' see PARA 685 note 13 ante.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 As to the power of leasing see PARA 837 et seq ante.

5 For these purposes, 'land granted in fee simple' means land so granted with or subject to a reservation out of it of a perpetual or terminable rentcharge which is or forms part of the settled land, and 'grant in fee simple' has a corresponding meaning: Settled Land Act 1925 s 52(9). For the meaning of 'land' see PARA 680 note 1 ante. As to rentcharges see generally RENTCHARGES AND ANNUITIES.

6 As to the various statutory powers see PARA 827 et seq ante.

7 For the meaning of 'mines and minerals' see PARA 680 note 1 ante.

8 Settled Land Act 1925 s 52(1).

- 9 Ibid s 52(2). For the meaning of 'rent' see PARA 801 note 1 ante.
- 10 Ibid s 52(3).
- 11 Ibid s 52(4). As to the prohibition on creating a rentcharge see PARA 828 note 5 ante.
- 12 See ibid s 52(6). As to the statutory requirements see PARA 839 et seq ante.
- 13 For the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.
- 14 For the meaning of 'subsidiary vesting deed' see PARA 691 text to notes 8, 16 ante.
- 15 Settled Land Act 1925 s 52(8). As to the statements and particulars required to be inserted in a subsidiary vesting deed see PARA 691 ante.
- 16 For the meaning of 'fine' see PARA 801 note 1 ante.
- 17 Settled Land Act 1925 s 52(5). A tenant for life who in good faith accepts a surrender and grants a new lease at an increased rent is entitled to the whole of the increased rent: *Re Wix, Hardy v Lemon* [1916] 1 Ch 279.
- 18 For the meaning of 'capital money arising under the Act' see PARA 795 ante. As to the payment of capital money see PARA 804 ante.
- 19 As to the court see PARA 792 ante.
- 20 Settled Land Act 1925 s 52(7). As to applications to the court see PARAS 792-793 ante. As to the law in force prior to 1926 see PARA 949 note 1 post. In the case of a surrender of a term having 60 years or more to run or of a regrant in fee simple, any consideration payable by the tenant for life may be paid out of capital money arising under the Act: see s 73(1)(xi); and PARA 808 head (9) ante. However, compensation payable to the tenant cannot be paid out of capital money: *Re Earl De La Warr's Cooden Beach Settled Estate* [1913] 1 Ch 142, CA. As to payment out of capital money of compensation for improvements to an agricultural tenant see PARA 808 note 24 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/860. Power to vary leases and grants.

860. Power to vary leases and grants.

At any time, by deed, either with or without consideration in money or otherwise¹, a tenant for life² may vary, release, waive or modify, either absolutely or otherwise, the terms of any lease³, whenever made, of the settled land⁴ or any part of it, or any covenants or conditions contained in any grant in fee simple, whenever made, of land with or subject to a reservation out of it of a rent⁵ which is or forms part of the settled land, and in either case in respect of the whole or any part of the land comprised in such lease or grant; but, after such variation, release, waiver or modification, every such lease or grant must be such a lease or grant as might then have been lawfully made under the Settled Land Act 1925⁶ if the lease had been surrendered, or the land comprised in the grant had never been so comprised, or had been regranted⁷.

1 For the meaning of 'consideration in money or otherwise' see PARA 847 note 7 ante. As to the payment of consideration other than rent in respect of transactions effected under this power see the Settled Land Act 1925 s 61(1); and PARA 863 post.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 For the meaning of 'lease' see PARA 685 note 13 ante.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

5 For the meaning of 'rent' see PARA 801 note 1 ante.

6 As to what grants of leases can be made see PARAS 827 et seq, 837 et seq ante.

7 Settled Land Act 1925 s 59(1). The same result could be effected by means of a surrender and a new grant (see PARA 859 ante), but this provision is not limited to cases where at common law there would be a surrender and a new grant: *Re Savile Settled Estates, Savile v Savile* [1931] 2 Ch 210. A variation of the terms of a lease may operate by way of estoppel as between lessor and lessee as a surrender and new demise, but the remaindermen are not entitled to rely on the estoppel against the tenant for life, so that as between them the original lease is not destroyed: *Re Bruce, Brudenell v Brudenell* [1932] 1 Ch 316; *Re Arkwright's Settlement, Phoenix Assurance Co Ltd v Arkwright* [1945] Ch 195, [1945] 1 All ER 404. See also PARA 883 post. As to estoppel see ESTOPPEL vol 16(2) (Reissue) PARA 951 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/861. Power to give licences, consents and approval.

861. Power to give licences, consents and approval.

If land¹ is or has been disposed of subject to any covenant requiring the licence, consent or approval of the covenantee or his successors in title as to:

- 189 (1) the user of the land in any manner²;
- 190 (2) the erection, construction or alteration of or addition to buildings or works of any description on the land³;
- 191 (3) the plans or elevations of any proposed buildings or other works on the land⁴;
- 192 (4) any other act, matter or thing relating to the land, or any buildings or works on it⁵; or
- 193 (5) any assignment, underletting or parting with the possession of all or any part of the property comprised in any lease⁶ affecting the settled land⁷,

and the covenant enures for the benefit of settled land (including, where the disposition is a lease, the reversion expectant on its determination) the licence, consent or approval may be given by the tenant for life⁸ of the settled land affected⁹.

1 For the meaning of 'land' see PARA 680 note 1 ante.

2 Settled Land Act 1925 s 59(2)(a).

3 Ibid s 59(2)(b).

4 Ibid s 59(2)(c).

5 Ibid s 59(2)(d).

6 For the meaning of 'lease' see PARA 685 note 13 ante.

7 Settled Land Act 1925 s 59(2)(e). For the meaning of 'settled land' see PARA 680 text to note 2 ante.

8 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

9 Settled Land Act 1925 s 59(2).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/862. Power to apportion rents.

862. Power to apportion rents.

At any time, by deed, either with or without consideration in money or otherwise¹, a tenant for life² may agree for the apportionment of any rent³ reserved or created by any lease or grant⁴, whenever made⁵, or any rent being or forming part of the settled land⁶, so that the apportioned parts of the rent are from that time to be payable exclusively out of or in respect of such respective portions of the land⁷ subject to it as may be thought proper, and may also agree that any covenants, agreements, powers or remedies for securing the rent and any other covenants or agreements by the lessee or grantee and any conditions are also to be apportioned and made applicable exclusively to the respective portions of the land out of or in respect of which the apportioned parts of the rent are from that time to be payable⁸.

1 For the meaning of 'consideration in money or otherwise' see PARA 847 note 7 ante. As to the payment of consideration other than rent in respect of transactions effected under this power see the Settled Land Act 1925 s 61(1), and PARA 863 post.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 For the meaning of 'rent' see PARA 801 note 1 ante.

4 Ie any lease or grant as mentioned in the Settled Land Act 1925 s 59 (see PARAS 860-861 ante): see s 60(1). For the meaning of 'lease' see PARA 685 note 13 ante.

5 See ibid s 60(3).

6 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

7 For the meaning of 'land' see PARA 680 note 1 ante.

8 Settled Land Act 1925 s 60(1).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/863. Payment of consideration other than rent in respect of certain transactions.

863. Payment of consideration other than rent in respect of certain transactions.

All money, not being rent¹, payable by the tenant for life² in respect of any transaction effected under the statutory powers to compromise claims³, or to release, waive or modify restrictions⁴, or to procure variation of leases, grants and covenants⁵, or to vary leases and grants⁶, or to give licences, consents and approval⁷, or to apportion rents⁸, must be paid out of capital money arising under the Settled Land Act 1925⁹, and all money, not being rent, received¹⁰ on the exercise by the tenant for life of any of those powers is capital money arising under that Act, unless the court¹¹, on an application made within six months after the receipt of the money or within such further time as the court may in special circumstances allow, otherwise directs¹².

1 For the meaning of 'rent' see PARA 801 note 1 ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 See PARA 872 post.

4 See PARA 873 post.

5 See PARA 847 ante.

6 See PARA 860 ante.

7 See PARA 861 ante.

8 See PARA 862 ante.

9 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

10 As to the payment of capital money see PARA 804 ante.

11 As to the court see PARA 792 et seq ante.

12 Settled Land Act 1925 s 61(1).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/864. Power to make grants for public and charitable purposes.

864. Power to make grants for public and charitable purposes.

For the development, improvement or general benefit of the settled land¹, or any part of it, a tenant for life² may make a grant in fee simple, or absolutely, or a lease for any term of years absolute³, for a nominal price or rent⁴ or for less than the best price or rent that can reasonably be obtained, or gratuitously, of any part of the settled land, with or without any easement, right or privilege over or in relation to the settled land or any part of it, for all or any one or more of certain specified purposes⁵. The purposes are:

- 194 (1) for the site, or the extension of any existing site, of a place of religious worship, residence for a minister of religion, school house, town hall, market house, public library, public baths, museum, hospital, infirmary or other public building, literary or scientific institution, drill hall, working men's club, parish room, reading room or village institute, with or without in any case any yard, garden or other ground to be held with any such building⁶;
- 195 (2) for the construction, enlargement or improvement of any railway, canal, road (public or private), dock, sea wall, embankment, drain, watercourse or reservoir⁷; or
- 196 (3) for any other public or charitable purpose in connection with the settled land, or any part of it, or tending to the benefit of the persons residing, or for whom dwellings may be erected, on the settled land or any part of it⁸.

Not more than one acre may in any particular case be conveyed for any purpose mentioned under head (1) or head (3), nor more than five acres for any purpose mentioned in head (2), unless the full consideration is paid or reserved in respect of the excess⁹. All money, not being rent, received on the exercise of any of the above powers is capital money arising under the Settled Land Act 1925¹⁰.

1 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 For the meaning of 'lease' see PARA 685 note 13 ante; and for the meaning of 'term of years absolute' see PARA 678 note 13 ante.

4 For the meaning of 'rent' see PARA 801 note 1 ante.

5 See the Settled Land Act 1925 s 55(1).

6 Ibid s 55(1)(i).

7 Ibid s 55(1)(ii).

8 Ibid s 55(1)(iii). As to charitable purposes see CHARITIES vol 8 (2010) PARA 1 et seq.

9 Ibid s 55(1). As to grants and leases to the National Trust see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 993.

10 Ibid s 55(2). See also PARA 831 ante. For the meaning of 'capital money arising under the Act' see PARA 795 ante. As to the payment of capital money see PARA 804 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/865. Power to dedicate land for streets and open spaces.

865. Power to dedicate land for streets and open spaces.

On or after or in connection with a sale or grant for building purposes¹, or a building lease², or the development as a building estate of the settled land³, or any part of the settled land, or at any other reasonable time, the tenant for life⁴, for the general benefit of the residents on the settled land, or on any part of it⁵, may:

- 197 (1) cause or require any parts of the settled land to be appropriated and laid out for streets, roads, paths, squares, gardens or other open spaces for the use, gratuitously or on payment, of the public or of individuals, with sewers, drains, watercourses, fencing, paving or other works necessary or proper in connection with it⁶;
- 198 (2) secure the continuance of that appropriation and the continued repair or maintenance of streets or those other places and works by providing that the lands are to be conveyed to or vested in the trustees of the settlement⁷, or other trustees, or any company or public body, with or without provision for appointment of new trustees when required⁸; and
- 199 (3) may execute any general or other deed⁹ necessary or proper for giving effect to these provisions declaring the mode, terms and conditions of the appropriation and the manner in which and the persons by whom the benefit of it is to be enjoyed, and the nature and extent of the privileges and conveniences granted¹⁰.

In regard to the dedication of land for such public purposes, a tenant for life is in the same position as if he were an absolute owner¹¹. A tenant for life has power (a) to enter into any agreement for recompense to be made for any part of the settled land which is required for the widening of a highway under the Highways Act 1980¹² or otherwise¹³; and (b) to consent to the diversion of any highway over the settled land under that Act¹⁴ or otherwise¹⁵. Any agreement or consent so made or given is as valid and effectual, for all purposes, as if made or given by an absolute owner of the settled land¹⁶. All money, not being rent¹⁷, received on the exercise of any of the above powers is capital money arising under the Settled Land Act 1925¹⁸.

A tenant for life may also enter into an agreement, binding upon any person deriving title or otherwise claiming title under him, in respect of an experimental project or scheme designed to facilitate the enjoyment of the countryside or to conserve its natural beauty¹⁹ or with a local authority in connection with the provision of a country park²⁰. Such an agreement may be entered into either for consideration or gratuitously²¹.

1 For the meaning of 'building purposes' see PARA 808 note 44 ante.

2 For the meaning of 'building lease' see PARA 842 note 1 ante.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

5 Settled Land Act 1925 s 56(1).

6 Ibid s 56(1)(i). The expenses of making streets and other works under this provision may be raised out of capital money; see PARA 816 head (18) ante. As to open spaces generally see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 501 et seq.

7 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

8 See the Settled Land Act 1925 s 56(1)(ii).

9 The deed may be enrolled in the Central Office of the Supreme Court: see *ibid* s 56(1)(iii). As to such enrolment see CIVIL PROCEDURE.

10 *Ibid* s 56(1)(iii).

11 *Ibid* s 56(2).

12 See the Highways Act 1980 s 72 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 488.

13 Settled Land Act 1925 s 56(3)(a) (amended by the Highways Act 1980 s 343(2), Sch 24 para 2).

14 See *ibid* ss 116-122 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 786-789, 641 et seq.

15 Settled Land Act 1925 s 56(3)(b) (amended by the Highways Act 1980 Sch 24 para 2).

16 Settled Land Act 1925 s 56(3). As to the dedication of settled land as a highway otherwise than under s 56 (as amended) see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 115.

17 For the meaning of 'rent' see PARA 801 note 1 ante.

18 See the Settled Land Act 1925 s 56(4). For the meaning of 'capital money arising under the Act' see PARA 795 ante. As to the payment of capital money see PARA 804 ante.

19 See the Countryside Act 1968 ss 4, 45 (both as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARAS 524, 566.

20 See *ibid* ss 7, 8 (as amended), 45 (as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 566.

21 See *ibid* s 45(1), (2) (as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 566. For the purposes of the Settled Land Act 1925 s 72 (see PARA 874 post), such an agreement is treated as a disposition: see the Countryside Act 1968 s 45(1), (2) (as amended); and OPEN SPACES AND COUNTRYSIDE VOL 78 (2010) PARA 566.

UPDATE

865 Power to dedicate land for streets and open spaces

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 9--For 'Supreme Court' substitute 'Senior Courts': Constitutional Reform Act 2005 Sch 11 para 4 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/866. Powers as regards land in the Green Belt area.

866. Powers as regards land in the Green Belt area.

A tenant for life¹ of land in the Green Belt area around London may by deed expressly declare that the land is part of that Green Belt, may enter into covenants restrictive of the user of that land and may by agreement confer a right of pre-emption, binding his successors, on a local authority².

1 As to the tenant for life see PARA 761 et seq ante.

2 See the Green Belt (London and Home Counties) Act 1938 ss 3(a), 18, 19 (as amended); and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 699; TOWN AND COUNTRY PLANNING.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/867. Powers to enter into forestry dedication covenants and agreements as to cattle-grids or by-passes.

867. Powers to enter into forestry dedication covenants and agreements as to cattle-grids or by-passes.

A tenant for life¹ may enter into a forestry dedication covenant relating to the settled land or any part of it either for consideration or gratuitously². He may also enter into an agreement with the appropriate authority for the use of part of the settled land for the purpose of providing, altering or improving a cattle-grid or by-pass³.

1 As to the tenant for life see PARA 761 et seq ante.

2 See the Forestry Act 1967 s 5(4), Sch 2 para 1 (as amended); and FORESTRY vol 52 (2009) PARA 119.

3 See the Highways Act 1980 s 87(1), (4) (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 520.

UPDATE

867 Powers to enter into forestry dedication covenants and agreements as to cattle-grids or by-passes

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/868. Power to grant water rights.

868. Power to grant water rights.

For the development, improvement or general benefit of the settled land¹, or any part of it, a tenant for life² may make a grant in fee simple or absolutely, or a lease³ for any term of years absolute⁴, for a nominal price or rent⁵, or for less than the best price or rent that can reasonably be obtained, or gratuitously, to any statutory authority⁶ of any water or streams or springs of water in, upon or under the settled land, and of any rights of taking, using, enjoying and conveying water, and of laying, constructing, maintaining and repairing mains, pipes, reservoirs, dams, weirs and other works of any kind proper for the supply and distribution of water, and of any part of the settled land required as a site for any of such works, and of any easement, right or privilege over or in relation to the settled land or any part of it in connection with any such works⁷. However, no greater rights can be created than could have been created by a person absolutely entitled for his own benefit to the settled land affected⁸. All money, not being rent, received on the exercise of any of the above powers is capital money arising under the Settled Land Act 1925⁹.

1 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 For the meaning of 'lease' see PARA 685 note 13 ante.

4 For the meaning of 'term of years absolute' see PARA 678 note 13 ante.

5 For the meaning of 'rent' see PARA 801 note 1 ante.

6 For these purposes, 'statutory authority' means an authority or company for the time being empowered by any Act of Parliament, public general, local or private, or by any order or certificate having the force of an Act of Parliament, to provide with a supply of water any town, parish or place in which the settled land or any part of it is situated: Settled Land Act 1925 s 54(3).

7 Ibid s 54(1). As to water undertakers see WATER AND WATERWAYS vol 100 (2009) PARAS 137 et seq, 318 et seq.

8 Ibid s 54(2). See also WATER AND WATERWAYS vol 100 (2009) PARA 69.

9 See ibid s 54(4); and PARA 831 ante. For the meaning of 'capital money arising under the Act' see PARA 795 ante. As to the payment of capital money see PARA 804 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/869. Power to contract.

869. Power to contract.

A tenant for life¹ may contract to exercise the statutory powers conferred on him, that is, he may contract to make any sale, exchange, mortgage, charge or other disposition authorised by the Settled Land Act 1925², and may, with or without consideration, vary or rescind the contract as if he were absolute owner of the settled land³, provided that the varied contract is within the statutory powers⁴. He may contract to make any lease⁵, and in making the lease may vary the terms, with or without consideration, but so that the lease is within the statutory powers⁶, and may accept the surrender of a contract for a lease or a grant in fee simple at a rent⁷, in like manner and on the like terms in and on which he might accept a surrender of a lease or a regrant⁸, and may then make a new or other contract for or relative to a lease or leases, or a grant or grants in fee simple at a rent, in like manner and on the like terms in and on which he might make a new or other lease or grant, or new or other leases or grants, where a lease or a grant in fee simple at a rent had been executed⁹. However, a preliminary contract under the Settled Land Act 1925 for or relating to a lease, and a contract conferring an option does not form part of the title or evidence of the title of any person to the lease, or to its benefit, or to the land the subject of the option¹⁰. The tenant for life may also enter into a contract for or relating to the execution of any statutory improvement, or to do any act for carrying any statutory purpose into effect, and may vary or rescind any such contract¹¹.

All money, not being rent, received on the exercise by the tenant for life or statutory owner¹² of any of the above powers is capital money arising under the Settled Land Act 1925¹³ unless the court¹⁴, on an application made within six months after the receipt of the money or within such further time as the court may in special circumstances allow, otherwise directs¹⁵.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 Settled Land Act 1925 s 90(1)(i). For the meaning of 'disposition' see PARA 685 note 14 ante.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 See the Settled Land Act 1925 s 90(1)(ii). As to the various statutory powers see PARA 827 et seq ante.

5 For the meaning of 'lease' see PARA 685 note 13 ante.

6 See the Settled Land Act 1925 s 90(1)(iii). This empowers the tenant for life to contract to grant a lease which, when granted, complies with the statutory requirements: *Re Rycroft's Settlement, Rycroft v Rycroft* [1962] Ch 263, [1961] 3 All ER 581. As to the power of leasing see PARA 837 et seq ante.

7 For the meaning of 'rent' see PARA 801 note 1 ante.

8 As to the acceptance of surrenders of leases and regrants see PARA 859 ante.

9 Settled Land Act 1925 s 90(1)(iv). See also PARA 860 ante. As to the power to make grants in fee simple at a rent see PARAS 828-829 ante.

10 Ibid s 90(4). See also *Hughes v Fanagan* (1891) 30 LR Ir 111 at 117, Ir CA. As to evidence of title see SALE OF LAND vol 42 (Reissue) PARA 137 et seq.

11 See the Settled Land Act 1925 s 90(1)(v), (vi); and PARA 794 ante. As to statutory improvements see PARA 809 et seq ante.

12 For the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

13 For the meaning of 'capital money arising under the Act' see PARA 795 ante. As to the payment of capital money see PARA 804 ante.

14 As to applications to the court see PARAS 792-793 ante.

15 Settled Land Act 1925 s 90(5).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/870. Effect of contract.

870. Effect of contract.

A contract, including a contract arising by reason of the exercise of an option¹, made under the statutory power binds and enures for the benefit of the settled land², and is enforceable against and by every successor in title for the time being of the tenant for life or statutory owner³, and may be carried into effect by any such successor, who may vary or rescind it as if it had been made by himself⁴. On the application of the tenant for life or statutory owner, or of any such successor, or of any person interested in any contract, the court⁵ may give directions respecting the enforcing, carrying into effect, varying or rescinding of the contract⁶, but it cannot adjudicate on the claims of persons not parties to it⁷.

1 As to the power to grant options see PARA 871 post.

2 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

3 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

4 Settled Land Act 1925 s 90(2). As the contract enures for the benefit of the settled land, a forfeited deposit is capital money: see the cases cited in PARA 944 note 5 post. As to the completion of contracts made by a predecessor see PARA 876 post.

5 As to applications to the court see PARAS 792-793 ante.

6 Settled Land Act 1925 s 90(3). See also *Re Marquis of Ailesbury and Lord I'veagh* [1893] 2 Ch 345 at 358.

7 *Re Ailesbury Settled Estates* (1893) 62 LJ Ch 1012.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/871. Power to grant options.

871. Power to grant options.

A tenant for life¹ may at any time, either with or without consideration, grant by writing an option to purchase or take a lease² of the settled land³, or any part of it, or any easement, right or privilege over or in relation to it at a price or rent⁴ fixed at the time of the granting of the option⁵. Every such option must be made exercisable within an agreed number of years not exceeding ten⁶. The price or rent must be the best which, having regard to all the circumstances, can reasonably be obtained, and either:

- 200 (1) may be a specified sum of money or rent, or at a specified rate according to the superficial area of the land⁷ with respect to which the option is exercised, or its frontage or otherwise⁸;
- 201 (2) in the case of an option to purchase contained in a lease or agreement for a lease, may be a stated number of years' purchase of the highest rent reserved by the lease or agreement⁹; or
- 202 (3) if the option is exercisable as regards part of the land comprised in the lease or agreement, may be a proportionate part of such highest rent¹⁰,

and any aggregate price or rent may be made to be apportionable in any manner, or according to any system, or by reference to arbitration¹¹. An option to take a mining lease¹² may be coupled with the grant of a licence to search for and prove any mines or minerals¹³ under the settled land, or any part of it, pending the exercise of the option¹⁴. The consideration for the grant of the option is capital money arising under the Settled Land Act 1925¹⁵.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'lease' see PARA 685 note 13 ante. As to options to purchase contained in leases and options to renew leases see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 135 et seq. As to options to purchase land generally see SALE OF LAND vol 42 (Reissue) PARA 27.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 For the meaning of 'rent' see PARA 801 note 1 ante.

5 Settled Land Act 1925 s 51(1).

6 Ibid s 51(2).

7 For the meaning of 'land' see PARA 680 note 1 ante.

8 Settled Land Act 1925 s 51(3)(a).

9 Ibid s 51(3)(b).

10 Ibid s 51(3)(c).

11 Ibid s 51(3). As to arbitration see ARBITRATION vol 2 (2008) PARA 1201 et seq.

12 For the meaning of 'mining lease' see PARA 843 note 1 ante.

13 For the meaning of 'mines and minerals' see PARA 680 note 1 ante.

14 Settled Land Act 1925 s 51(4).

15 See *ibid* s 51(5). For the meaning of 'capital money arising under the Act' see PARA 795 ante. As to the payment of capital money see PARA 804 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/872. Power to compromise claims.

872. Power to compromise claims.

With the written consent of the trustees of the settlement¹, either with or without giving or taking any consideration in money or otherwise², a tenant for life³ may compromise, compound, abandon, submit to arbitration or otherwise settle any claim, dispute or question whatsoever relating to the settled land⁴ or any part of it, including in particular claims, disputes or questions as to boundaries, the ownership of mines and minerals⁵, rights and powers of working mines and minerals, local laws and customs relative to the working of mines and minerals and other matters, easements and restrictive covenants, and for any of those purposes may enter into, give, execute and do such agreements, assurances, releases and other things as the tenant for life may, with such consent, think proper⁶.

1 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

2 For the meaning of 'consideration in money or otherwise' see PARA 847 note 7 ante. As to the payment of consideration other than rent in respect of transactions effected under this power see PARA 863 ante.

3 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

5 For the meaning of 'mines and minerals' see PARA 680 note 1 ante.

6 See the Settled Land Act 1925 s 58(1) (amended by the Statute Law (Repeals) Act 1969); and PARA 788 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/873. Power to release, waive or modify restrictions.

873. Power to release, waive or modify restrictions.

With the written consent of the trustees of the settlement¹, a tenant for life² may at any time, by deed or writing, either with or without consideration in money or otherwise³, release, waive or modify, or agree to release, waive or modify any covenant, agreement or restriction imposed on any other land⁴ for the benefit of the settled land⁵ or any part of it, or release, or agree to release, any other land from any easement, right or privilege, including a right of pre-emption, affecting that land for the benefit of the settled land or any part of it⁶.

1 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 For the meaning of 'consideration in money or otherwise' see PARA 847 note 7 ante. As to the payment of consideration other than rent in respect of transactions effected under this power see PARA 863 ante.

4 For the meaning of 'land' see PARA 680 note 1 ante.

5 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

6 Settled Land Act 1925 s 58(2). A tenant for life has a right of pre-emption in respect of any part of the settled land acquired under the Defence of the Realm (Acquisition of Land) Act 1916, and has power to release that right: see s 5(3) (as amended), (4); the Defence of the Realm (Acquisition of Land) Act 1920 s 2; and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 520.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/874. Power to complete transactions by conveyance.

874. Power to complete transactions by conveyance.

On a sale, exchange, lease, mortgage, charge or other disposition¹, as regards land² sold, given in exchange, leased, mortgaged, charged or otherwise disposed of, or intended so to be, or as regards easements or other rights or privileges sold, given in exchange, leased, mortgaged or otherwise disposed of, or intended so to be, the tenant for life³ may effect the transaction by deed to the extent of the estate or interest vested or declared to be vested in him by the last or only vesting instrument affecting the settled land⁴ or any less estate or interest, in the manner requisite for giving effect to the sale, exchange, lease, mortgage, charge or other disposition, but a mortgage must be effected by the creation of a term of years absolute⁵ in the settled land, or by charge by way of legal mortgage⁶, and not otherwise⁷.

To the extent and in the manner to and in which it is expressed or intended to operate and can operate under the Settled Land Act 1925, such a deed⁸ is effectual to pass the land conveyed, or the easements, rights, privileges or other interests created, discharged from all the limitations⁹, powers and provisions of the settlement¹⁰, and from all estates, interests and charges subsisting or to arise under it¹¹, but subject to and with the exception of (1) all legal estates¹² and charges by way of legal mortgage having priority to the settlement¹³; (2) all legal estates and charges by way of legal mortgage which have been conveyed or created for securing money actually raised at the date of the deed¹⁴; and (3) all leases and grants at fee farm rents¹⁵ or otherwise, and all grants of easements, rights of common or other rights or privileges which were before the date of the deed granted or made for value in money or money's worth, or agreed so to be, by the tenant for life or statutory owner¹⁶, or by any of his predecessors in title or any trustees for them, under the settlement, or under any statutory power, or are at that date otherwise binding on the successors in title of the tenant for life or statutory owner¹⁷, and which are at the date of the deed protected by registration under the relevant Act if capable of registration under it¹⁸. Notwithstanding registration under the relevant Act of an annuity¹⁹, or of a limited owner's charge²⁰ or a general equitable charge within the meaning of the relevant Act²¹, a disposition under the Settled Land Act 1925 operates to overreach such annuity or charge which, according to its priority, takes effect as if limited by the settlement²².

This provision does not validate a deed which under the Settled Land Act 1925 the tenant for life has no power to execute²³, but a lease made by a tenant for life who believes himself to be an absolute owner is valid, provided that it is one within the statutory powers²⁴.

1 For the meaning of 'lease' see PARA 685 note 13 ante; and for the meaning of 'disposition' see PARA 685 note 14 ante. For the purposes of the Settled Land Act 1925 s 72, entering into a forestry dedication covenant is treated as a disposition: see PARA 867 ante. An agreement under the Countryside Act 1968 is also treated as a disposition: see PARA 865 ante.

2 For the meaning of 'land' see PARA 680 note 1 ante.

3 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

4 For the meaning of 'vesting instrument' see PARA 690 note 8 ante. For the meaning of 'settled land' see PARA 680 text to note 2 ante. A tenant for life or statutory owner cannot make an effective disposition of the settled land under the statutory powers until after a vesting instrument has been executed in his favour: see the Settled Land Act 1925 s 13 (as amended); and PARA 702 ante.

5 For the meaning of 'term of years absolute' see PARA 678 note 13 ante.

- 6 For the meaning of 'legal mortgage' see PARA 698 note 23 ante.
- 7 Settled Land Act 1925 s 72(1).
- 8 A lease in writing under hand has the same operation as if it had been a deed in any case where a lease is authorised by the Settled Land Act 1925 to be made in that manner: see s 72(4); and PARA 839 ante.
- 9 For the meaning of 'limitation' see PARA 708 note 4 ante.
- 10 For the meaning of 'settlement' see PARA 678 note 1 ante.
- 11 Settled Land Act 1925 s 72(2). The land may be conveyed free from charges arising under the settlement, so long as they have not been actually raised (*Re Keck and Hart's Contract* [1898] 1 Ch 617; *Re Du Cane and Nettlefold's Contract* [1898] 2 Ch 96), and where there is a compound settlement (see PARA 681 ante), even if the charges in question have been created by a deed prior to that by which the estate of the tenant for life is limited (*Re Marquis of Ailesbury and Lord Iveagh* [1893] 2 Ch 345, approved in *Re Mundy and Roper's Contract* [1899] 1 Ch 275, CA; *Re Phillimore's Estate, Phillimore v Milnes* [1904] 2 Ch 460). A terminable rentcharge created by a tenant for life under the Settled Land Act 1925 s 85(1) (see PARA 813 ante) will be overreached: see s 85(3); and PARA 808 ante.
- 12 For the meaning of 'legal estate' see PARA 678 note 13 ante.
- 13 Settled Land Act 1925 s 72(2)(i). 'Priority' means priority in interest, so that eg a legal estate created by the tenant for life under s 16(1)(ii) (see PARA 767 ante) will not be overreached. Examples of other legal estates having priority to the settlement are a legal mortgage created prior to the settlement, or the freehold in the case of a settlement of leaseholds.
- 14 Ibid s 72(2)(ii). These include legal mortgages or charges by way of legal mortgage created under the statutory powers (see PARAS 849-850 ante) or under any powers for that purpose contained in the settlement (*Re Dickin and Kelsall's Contract* [1908] 1 Ch 213 at 221; *Re Davies and Kent's Contract* [1910] 2 Ch 35 at 57, CA), and mortgages and charges for securing sums of money actually raised for portions (*Re Keck and Hart's Contract* [1898] 1 Ch 617 at 624). As the estates or interests of the beneficiaries under the settlement are equitable only (see REAL PROPERTY vol 39(2) (Reissue) PARA 46 et seq), these words will not cover mortgages or charges on the estate or interest of any beneficiary: see *Re Dickin and Kelsall's Contract* supra; *Re Davies and Kent's Contract* supra. In an Irish case (*Connolly v Keating* [1903] 1 IR 353) the deed was taken to mean the deed creating the charge, not the deed for effecting the conveyance. It seems doubtful whether this interpretation is consistent with what has been said in *Re Keck and Hart's Contract* supra; *Re Du Cane and Nettlefold's Contract* [1898] 2 Ch 96; *Re Mundy and Roper's Contract* [1899] 1 Ch 275, CA; and *Re Dickin and Kelsall's Contract* supra.
- 15 As to fee farm rents see REAL PROPERTY vol 39(2) (Reissue) PARA 5.
- 16 For the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.
- 17 Settled Land Act 1925 s 72(2)(iii)(a).
- 18 Ibid s 72(2)(iii)(b). The relevant Act is the Land Charges Act 1925 (repealed) or the Land Charges Act 1972: see s 18(5), (6). This includes registration under any statute which is to have effect as if registered under those Acts: see the Settled Land Act 1925 s 117(3); the Land Charges Act 1972 s 3(7), (8) (as amended); and LAND CHARGES vol 26 (2004 Reissue) PARA 606. Registration in the Yorkshire deeds registries, now closed (see the Law of Property Act 1969 ss 16, 17 (as amended); and SALE OF LAND vol 42 (Reissue) PARA 153), previously also had such effect: see the Land Charges Act 1925 s 10(6) (repealed). See also *Re Dickin and Kelsall's Contract* [1908] 1 Ch 213. As to the registration of estate contracts and equitable easements see LAND CHARGES vol 26 (2004 Reissue) PARAS 622, 632, 636. As to the inapplicability of the Land Charges Act 1972 to registered land see LAND CHARGES vol 26 (2004 Reissue) PARA 605.
- 19 See the Settled Land Act 1925 s 72(3)(a). As to the registration of annuities see LAND CHARGES vol 26 (2004 Reissue) PARAS 622, 667-670.
- 20 See ibid s 72(3)(b). As to the registration of a limited owner's charge see LAND CHARGES vol 26 (2004 Reissue) PARAS 622, 630.
- 21 See ibid s 72(3)(b). As to the registration of a general equitable charge see LAND CHARGES vol 26 (2004 Reissue) PARAS 622, 631.

22 See *ibid* s 72(3). As to the effect of a conveyance by a tenant for life see the Law of Property Act 1925 s 2(1)(i), (4), (5); and REAL PROPERTY vol 39(2) (Reissue) PARA 247 et seq. As to overreaching of equitable interests protected by registration see LAND CHARGES vol 26 (2004 Reissue) PARA 618.

23 *Re Newell and Nevill's Contract* [1900] 1 Ch 90, overruled on another point by *Re Gladstone, Gladstone v Gladstone* [1900] 2 Ch 101, CA.

24 *Mogridge v Clapp* [1892] 3 Ch 382, CA. See also *Re Pennant's Will Trusts, Pennant v Ryland* [1970] Ch 75, [1969] 2 All ER 862. As to the effect of leases not authorised by statutory or express powers see PARA 883 post. The case of a sale is different since the purchaser must ascertain that there are trustees to whom his purchase money can be paid: *Mogridge v Clapp* supra at 400. As to statutory powers of leasing see PARA 837 et seq ante.

UPDATE

874 Power to complete transactions by conveyance

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/875. Exercise of powers.

875. Exercise of powers.

Where any statutory or express¹ power of sale, exchange, leasing, mortgaging or charging or other power is exercised by a tenant for life or statutory owner², or by the trustees of a settlement³, he and they may respectively execute, make and do all deeds, instruments and things necessary or proper in that behalf⁴.

1 As to express powers see PARAS 880-881 post.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

3 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

4 See the Settled Land Act 1925 s 112(1).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/876. Power to complete predecessor's contracts and confirm past transactions.

876. Power to complete predecessor's contracts and confirm past transactions.

A tenant for life¹ may make any disposition² necessary or proper for giving effect to a contract entered into by a predecessor in title which, if made by such predecessor, would have been valid as against his successors in title³. With the leave of the court⁴, he may also execute a deed for the purpose of confirming any interests intended to affect the settled land (provided that they are capable of subsisting as legal estates⁵) which, at some prior date, were expressed to have been transferred or created, and of confirming also any dealings with it which would have been legal if those interests had been legally and validly transferred or created⁶.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'disposition' see PARA 685 note 14 ante.

3 Settled Land Act 1925 s 63. See also PARA 838 ante. As to the validation of defective leases see PARA 883 post.

4 As to the court see PARAS 792 ante, 905 post.

5 As to what estates are capable of subsisting as legal estates see the Law of Property Act 1925 s 1 (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 45.

6 See ibid s 66(1), (2) (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 246.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xi) Miscellaneous Powers/877. Leasehold enfranchisement.

877. Leasehold enfranchisement.

The statutory provisions relating to leasehold enfranchisement¹ apply in certain circumstances to a tenant for life² and to the trustees of a settlement³. Capital money may be applied⁴ or raised by mortgage of the settled land⁵ for the payment of expenses incurred⁶ in or in connection with proceedings taken to acquire the freehold or an extended lease⁷. The statutory provisions relating to the rights of members of the family to succeed to a tenancy on the death of a tenant of a house⁸ also apply on the death of a tenant for life in specified circumstances⁹.

1 See the Leasehold Reform Act 1967; and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1389 et seq.

2 As to the tenant for life see PARA 761 et seq ante.

3 See the Leasehold Reform Act 1967 s 6 (as amended); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1416.

4 As to modes of application of capital money see PARA 808 et seq ante.

5 As to the power to mortgage the settled land see PARAS 849-850 ante.

6 Le by a tenant for life or statutory owner: see the Leasehold Reform Act 1967 s 6(5) (as amended); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1416.

7 See ibid s 6(5) (as amended); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1416.

8 See ibid s 7 (as amended); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1418.

9 See ibid s 7(3), (5); and LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARA 1418.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xii) Dealings between Tenant for Life and Estate/878. Authorised dealings.

(xii) Dealings between Tenant for Life and Estate

878. Authorised dealings.

The Settled Land Act 1925 authorises certain specified dealings between the tenant for life and the settled estate¹. The dealings so authorised are:

- 203 (1) a sale, grant, lease², mortgage, charge or other disposition³ to him of settled land⁴, or of any easement, right or privilege over it⁵;
- 204 (2) an advance to him of capital money on mortgage⁶;
- 205 (3) a purchase from him of land⁷ to be made subject to the limitations⁸ of the settlement⁹; and
- 206 (4) an exchange with him of settled land for other land¹⁰.

Any such disposition, advance, purchase or exchange may be made to, from or with any persons of whom the tenant for life is one¹¹.

1 See the Settled Land Act 1925 s 68(1). As to the procedure see PARA 879 post. For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'lease' see PARA 685 note 13 ante.

3 For the meaning of 'disposition' see PARA 685 note 14 ante.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

5 See the Settled Land Act 1925 s 68(1)(a).

6 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

7 For the meaning of 'land' see PARA 680 note 1 ante.

8 For the meaning of 'limitation' see PARA 708 note 4 ante.

9 Settled Land Act 1925 s 68(1)(c). For the meaning of 'settlement' see PARA 678 note 1 ante.

10 Ibid s 68(1)(d).

11 Ibid s 68(1)(e). A transaction may be a valid exercise of this power even if the parties purport to act in a different capacity: *Re Pennant's Will Trusts, Pennant v Ryland*[1970] Ch 75, [1969] 2 All ER 862.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xii) Dealings between Tenant for Life and Estate/879. Powers exercisable by trustees.

879. Powers exercisable by trustees.

In dealings between the tenant for life and the settled estate¹, the trustees of the settlement², in addition to their powers as trustees, have all the powers of a tenant for life in reference to negotiating and completing the transaction, and have power to enforce any covenants by the tenant for life, or where the tenant for life is himself one of the trustees, then the others or other of them have such power, and the powers of the tenant for life may be exercised by the trustees of the settlement in the name and on behalf of the tenant for life³.

These provisions⁴ apply notwithstanding that the tenant for life is one of the trustees of the settlement, or that an order has been made authorising the trustees to act on his behalf⁵, or that he is a person suffering from mental disorder, but they do not apply to dealings with any body of persons which includes a trustee of the settlement, not being the tenant for life, unless the transaction is either previously or subsequently approved by the court⁶.

1 As to such authorised dealings see PARA 878 ante. For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

3 Settled Land Act 1925 s 68(2). A single trustee could act under this provision, provided that no capital money arises in respect of that transaction: see PARA 786 ante. Where settled land is purchased by the tenant for life who is also one of the trustees, he should be expressed to be one of the conveying parties as well as the purchaser: *Re Pennant's Will Trust, Pennant v Ryland* [1970] Ch 75, [1969] 2 All ER 862.

4 In the Settled Land Act 1925 s 68 (as amended): see s 68(3) (as amended: see note 6 infra).

5 As to the position where the tenant for life has parted with the interest see PARA 765 ante.

6 Settled Land Act 1925 s 68(3) (amended by the Mental Health Act 1959 s 149(1), Sch 7 Pt I). As to the court see PARA 792 ante. If the body of persons with whom a dealing is proposed includes both the tenant for life and one or more of the trustees of the settlement, the transaction must be approved by the court: see PARA 792 ante.

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(xiii) Extension of Statutory Powers

880. Conferment of additional or larger powers.

A settlor may confer on the tenant for life¹, or (subject to a specified restriction²) the trustees of the settlement³, any powers additional to or larger than the statutory powers⁴, and such additional or larger powers, as far as may be, operate and are exercisable in the like manner, and with all the like incidents, effects and consequences as if they were conferred by the Settled Land Act 1925, and, if relating to the settled land⁵, as if they were conferred by that Act on a tenant for life⁶. The statutory powers are cumulative, and nothing in the Settled Land Act 1925 takes away, abridges or prejudicially affects any power for the time being subsisting under a settlement, or by statute⁷ or otherwise, exercisable by a tenant for life, or (subject to the specified restriction) by trustees with his consent, on his request or by his direction, or otherwise⁸.

If a tenant for life purports to exercise 'every power and authority enabling him' he is presumed to have exercised the power which is most beneficial to him⁹. If a tenant for life has no express power to mortgage, but has an express power to lease, not confined to leasing at a rackrent, he can mortgage by demise for a term of years¹⁰.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 Ie in case of conflict between the settlement and the statutory provisions: see PARA 881 post.

3 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

4 See the Settled Land Act 1925 s 109(1).

5 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

6 See the Settled Land Act 1925 s 109(2). Where there is a compound settlement (see PARA 681 et seq ante) the tenant for life is entitled to exercise any larger or additional powers conferred by any deed forming part of it: *Re Cowley Settled Estates*[1926] Ch 725. As to the fiduciary position of the tenant for life in exercising any larger or additional powers see PARA 775 ante.

7 Eg the Lands Clauses Consolidation Act 1845 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 509 et seq). See also *Re Lady Bentinck and London and North Western Rly Co* (1895) 12 TLR 100; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 553, 682-683.

8 See the Settled Land Act 1925 s 108(1). The words 'or otherwise' refer not to the consent, request or direction of some person other than the tenant for life, but to something which the tenant for life is to do or abstain from doing: *Re Jefferys, Finch v Martin*[1939] Ch 205, [1938] 4 All ER 120.

9 *Earl Lonsdale v Lowther*[1900] 2 Ch 687; *Re Lady Bentinck and London and North Western Rly Co* (1895) 12 TLR 100.

10 *Mostyn v Lancaster, Taylor v Mostyn*(1883) 23 ChD 583, CA.

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881. Conflict between settlement and statutory provisions.

In case of conflict between the provisions of a settlement¹ and the statutory provisions² relative to any matter in respect of which the tenant for life or statutory owner³ exercises or contracts or intends to exercise any statutory power, the statutory provisions prevail; and, notwithstanding anything in the settlement, any power (not being merely a power of revocation or appointment) relating to the settled land⁴ conferred by the settlement on the trustees of the settlement⁵ or other persons exercisable for any purpose, whether or not provided for in the Settled Land Act 1925, is exercisable by the tenant for life or statutory owner as if it were an additional power conferred on the tenant for life and not otherwise⁶. The result is that if the tenant for life has one power by statute and the trustees have another power under the settlement, and there is a conflict between the provisions of the settlement and the statutory provisions, the power of the tenant for life is paramount⁷, and can be exercised free from any restraint imposed by the settlement⁸ or by a private Act of Parliament⁹.

1 For the meaning of 'settlement' see PARA 678 note 1 ante.

2 The provisions here referred to are provisions connected with the execution of the power, eg consent of a third person, not with the results of such execution; they deal with the act of execution, not with its proceeds: see *Earl Lonsdale v Lowther* [1900] 2 Ch 687.

3 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante. A power to appoint new trustees of the settlement is not one relating to the settled land for this purpose: *Re Maryon-Wilson's Instruments, Blofeld v Maryon-Wilson* [1971] Ch 789, [1969] 3 All ER 558.

5 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

6 See the Settled Land Act 1925 s 108(2); and PARA 880 ante.

7 *Clarke v Thornton* (1887) 35 ChD 307; *Re Lord Stamford's Settled Estates* (1889) 43 ChD 84; *Re Thomas, Weatherall v Thomas* [1900] 1 Ch 319. The effect of these decisions is that if there is a power under the settlement to pay for improvements out of income and a power under the Act to pay for them out of capital, effect will be given to the statutory power, but the statutory provisions do not override an absolute trust to pay for improvements out of income, the tenant for life in such a case being entitled only to the net balance: see *Re Partington, Reigh v Kane* [1902] 1 Ch 711.

8 *Re Jefferys, Finch v Martin* [1939] Ch 205, [1938] 4 All ER 120.

9 See *Re Chaytor's Settled Estate Act* (1884) 25 ChD 651. As to private Acts of Parliament see PARLIAMENT vol 34 (Reissue) PARA 845 et seq.

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882. Court decision on matters of doubt.

If a question arises or a doubt is entertained respecting any of the foregoing matters¹, the tenant for life or statutory owner², the trustees of the settlement³ or any other person interested under the settlement may apply to the court⁴ for its decision, and the court may make such order respecting the matter as it thinks fit⁵.

1 Le any matter within the Settled Land Act 1925 s 108: see PARAS 880-881 ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

3 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

4 As to the court see PARA 792 ante.

5 Settled Land Act 1925 s 108(3).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xiii) Extension of Statutory Powers/883. Effect of leases not authorised by statutory or express powers.

883. Effect of leases not authorised by statutory or express powers.

A lease by a tenant for life which is not authorised by his statutory powers¹ may be valid in equity. It will be valid so long as his beneficial interest subsists², but on the determination of his interest it is void³. However, if the remainderman allows the tenant to continue in possession and stands by while he expends money on the property, he may be bound to grant him a new lease⁴. Merely allowing a yearly tenant to continue in possession for a substantial time is a recognition of his tenancy and entitles him to notice to quit⁵.

As between the parties to the lease, it is in any case good by way of estoppel⁶. Further, a lessee dealing in good faith with a tenant for life is, as against all parties entitled under the settlement, conclusively taken to have given the best rent reasonably obtainable and to have complied with all the statutory requirements⁷; and leases invalidated by reason of non-compliance with the terms of the powers under which they are granted may in certain circumstances take effect in equity as a contract for the grant of a valid lease⁸.

1 This will include any additional express powers: see the Settled Land Act 1925 s 109; and PARA 880 ante. As to the tenant for life see PARA 761 et seq ante.

2 *Bragg v Wiseman* (1614) 1 Brownl 22. See also *Re Smyth, ex p Smyth* (1818) 1 Swan 337; *Symons v Symons and Powell* (1821) 6 Madd 207. However, the lease subsists for his life, notwithstanding the determination of his estate by surrender, or even, it has been said, by forfeiture: *Sutton's Case* (1701) 12 Mod Rep 557. The position regarding forfeiture is less certain, but it is thought that the statement in the text is accurate. As to covenants for renewal entered into by a limited owner see *Macartney v Blundell* (1789) 2 Ridg Parl Rep 113; *Higgins v Rosse* (1821) 3 Bli 112, HL; *Brereton v Tuohey* (1858) 8 ICLR 190.

3 *Doe d Simpson v Butcher* (1778) 1 Doug KB 50; *Roe d Jordan v Ward* (1789) 1 Hy Bl 97; *Doe d Pulteney v Lady Cavan* (1794) 5 Term Rep 567 at 570-571; *Doe d Potter v Archer* (1796) 1 Bos & P 531; *Mogridge v Clapp* [1892] 3 Ch 382 at 392, CA; *Chandler v Bradley* [1897] 1 Ch 315. Therefore, the remainderman cannot confirm the lease (*Jones d Cowper v Verney* (1739) Willes 169; *James d Aubrey v Jenkins* (1758) Bull NP 96; *Jenkins d Yate v Church* (1776) 2 Cwpl 482; *Doe d Simpson v Butcher* supra; *Ludford v Barber* (1786) 1 Term Rep 90), although the receipt of rent will constitute a yearly tenancy under the remainderman (see *Doe d Martin v Watts* (1797) 7 Term Rep 83), and the tenancy will commence from the day and be on the terms of the original demise, so far as applicable to a yearly tenancy (*Roe d Jordan v Ward* supra). However, to have this effect the rent must be suitable to a tenancy from year to year (see *Reynolds v Reynolds* (1848) 12 Eq R 172), and the receipt of a nominal sum as 'chief rent' will not suffice (*Smith v Widlake* (1877) 3 CPD 10, CA; cf *Jegon v Vivian* (1865) LR 1 CP 9 (affd (1868) LR 3 HL 285)). Nevertheless, in *Handman and Wilcox's Contract* [1902] 1 Ch 599, CA, the point whether the lease was void or voidable was left open. See also *Smith v Hobbs* (1980) Times, 13 November, CA (see note 4 infra).

4 See *Stiles v Cowper* (1748) 3 Atk 692; *Hardcastle v Shafto* (1794) 1 Anst 184 at 186; *Dann v Spurrier* (1802) 7 Ves 231 at 236; *Pilling v Armitage* (1805) 12 Ves 78 at 85. Cf *Bowes v East London Waterworks* (1818) 3 Madd 375 at 384; *O'Fay v Burke* (1858) 8 I Ch R 511. If there has been an unauthorised purchase and letting of land, ratification of the purchase involves ratification also of the letting: *Smith v Hobbs* (1980) Times, 13 November, CA.

5 *Doe d Cates v Somerville* (1826) 6 B & C 126 at 132; *O'Keeffe v Walsh* (1880) 8 LR Ir 184, Ir CA. The acceptance of a lessee by the remainderman will import into the new tenancy a covenant in the original lease by the lessee to repair: *Morrogh v Alleyne* (1873) 7 IR Eq 487.

6 *Yellowly v Gower* (1855) 11 Exch 274. A tenant for life who agrees to grant a lease for a term in excess of the power is bound to carry out his agreement to the extent of his own interest (cf *Byrne v Acton* (1721) 1 Bro Parl Cas 186, HL; *Dyas v Cruise* (1845) 2 Jo & Lat 460) with compensation (*Leslie v Crommelin* (1867) IR 2 Eq 134). However, the remaindermen cannot have specific performance of the agreement: see *Ricketts v Bell* (1847) 1 De G & Sm 335. See also ESTOPPEL vol 16(2) (Reissue) PARAS 1029-1042.

- 7 See the Settled Land Act 1925 ss 109(2), 110(1); and PARAS 880 ante, 885 post.
- 8 See the Law of Property Act 1925 ss 152, 154; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 145.

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884. Leases by tenants in tail.

A tenant in tail¹ has all the powers of leasing of a tenant for life under the Settled Land Act 1925². In addition, however, a lease not authorised under those powers, if made by deed, will take effect under the Fines and Recoveries Act 1833³, but only in equity⁴. If not made by deed, it will be void as against the persons entitled subject to the entailed interest⁵, but will be voidable only as against the issue in tail⁶, and may be confirmed either expressly or impliedly by a subsequent tenant in tail⁷.

1 As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

2 See the Settled Land Act 1925 s 20(1)(i); and PARA 762 ante. For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante. As to the powers of leasing of a tenant for life see PARA 837 et seq ante.

3 See the Fines and Recoveries Act 1833 ss 15, 40 (both as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 121 et seq.

4 See the Law of Property (Amendment) Act 1924 s 9, Sch 9; and REAL PROPERTY vol 39(2) (Reissue) PARA 121.

5 Co Litt 45b; *Andrew v Pearce* (1805) 1 Bos & PNR 158 at 162. As to the effect of leases not authorised by statutory or express powers see PARA 883 ante.

6 Co Litt 45b; *Earl of Bedford's Case* (1586) 7 Co Rep 7b. See also LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 30.

7 *Stiles v Cowper* (1748) 3 Atk 692; *Doe d Southhouse v Jenkins* (1829) 5 Bing 469 at 476; cf *Doe d Phillips v Rollings* (1847) 4 CB 188. See, however, *Osborn v Duke of Marlborough* (1866) 14 LT 789.

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(xiv) Protection of Trustees and Third Persons

885. Protection of purchasers from tenant for life.

On a sale, exchange, lease¹, mortgage, charge or other disposition², a purchaser³ dealing in good faith with a tenant for life or statutory owner⁴ is, as against all parties entitled under the settlement⁵, conclusively taken to have given the best price, consideration or rent⁶, as the case may require, that could reasonably be obtained by the tenant for life or statutory owner, and to have complied with all the statutory requirements⁷. The fact that the transaction is at an undervalue, without anything more, is insufficient to invalidate it if the person dealing with the tenant for life acted in good faith⁸, but, if he is not acting in good faith, the transaction may be set aside at the instance of the beneficiaries, not only against such person himself, but possibly also against his transferees who have acquired the property without notice of the defect⁹.

1 For the meaning of 'lease' see PARA 685 note 13 ante.

2 For the meaning of 'disposition' see PARA 685 note 14 ante.

3 For the meaning of 'purchaser' see PARA 702 note 12 ante.

4 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

5 For the meaning of 'settlement' see PARA 678 note 1 ante.

6 For the meaning of 'rent' see PARA 801 note 1 ante.

7 Settled Land Act 1925 s 110(1). This provision is not limited to cases where the only defect is insufficiency of the consideration, and, subject to the requirement of good faith, it applies to an executory transaction: *Re Morgan's Lease, Jones v Norsesowicz*[1972] Ch 1, [1971] 2 All ER 235. Subject to that requirement, it applies whether the purchaser knew or did not know that he was dealing with a tenant for life or statutory owner: *Re Morgan's Lease, Jones v Norsesowicz* supra, not following *Weston v Henshaw*[1950] Ch 510. As to notice to and receipt by the trustees of the settlement see PARA 783 et seq ante.

8 *Hurrell v Littlejohn*[1904] 1 Ch 689.

9 *Re Handman and Wilcox's Contract*[1902] 1 Ch 599, CA, where the court left open the questions whether the transaction was void or voidable, and, if only voidable, whether it could be set aside against a subsequent purchaser for value without notice.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xiv) Protection of Trustees and Third Persons/886. Assumptions to be made by purchaser of legal estate.

886. Assumptions to be made by purchaser of legal estate.

Except in certain specified cases¹, a purchaser² of a legal estate³ in settled land⁴ is not bound or entitled to call for the production of the trust instrument⁵ or any information concerning it or any ad valorem stamp duty on it⁶, and, whether or not he has notice of its contents, he is, except in the specified cases, bound and entitled if the last or only principal vesting instrument⁷ contains the requisite statements and particulars⁸ to assume that⁹:

- 207 (1) the person in whom the land is by the instrument vested or declared to be vested is the tenant for life or statutory owner¹⁰ and has all the statutory powers of a tenant for life, including such additional or larger powers, if any, as are mentioned in it¹¹;
- 208 (2) the persons by the instrument stated to be the trustees of the settlement¹², or their successors appearing to be duly appointed, are the properly constituted trustees of the settlement¹³;
- 209 (3) the statements and particulars required by the Settled Land Act 1925 and contained (expressly or by reference) in the instrument were correct at its date¹⁴;
- 210 (4) the statements contained in any deed executed in accordance with that Act declaring who are the trustees of the settlement for the purposes of that Act are correct¹⁵; and
- 211 (5) the statements contained in any deed of discharge executed in accordance with that Act are correct¹⁶.

In the case of the first vesting instrument executed for the purpose of giving effect to (a) a settlement subsisting on 1 January 1926¹⁷; (b) an instrument which by virtue of the Settled Land Act 1925 is deemed to be a settlement¹⁸; (c) a settlement which by virtue of that Act is deemed to have been made by any person after 1925¹⁹; or (d) an instrument inter vivos intended to create a settlement of a legal estate in land which is executed after 1925 and which does not comply with the statutory requirements with respect to the method of effecting such a settlement²⁰, a purchaser is concerned to see that the land disposed of to him is comprised in the settlement or instrument²¹, that the person in whom the settled land is by the vesting instrument vested or declared to be vested is the person in whom it ought to be vested as tenant for life or statutory owner²², and that the persons stated to be the trustees of the settlement are the properly constituted trustees of the settlement²³.

1 As to these cases see the text to notes 17-23 infra.

2 For the meaning of 'purchaser' see PARA 702 note 12 ante.

3 For the meaning of 'legal estate' see PARA 678 note 13 ante.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

5 For the meaning of 'trust instrument' see PARA 688 note 7 ante. See also PARAS 694-695 ante.

6 As to stamp duty see PARA 623 ante.

7 For the meaning of 'principal vesting instrument' see PARA 698 note 1 ante.

8 As to what statements and particulars are required see PARA 690 ante.

9 Settled Land Act 1925 s 110(2).

10 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

11 Settled Land Act 1925 s 110(2)(a). As to the powers of a tenant for life see PARA 775 et seq ante.

12 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

13 Settled Land Act 1925 s 110(2)(b).

14 Ibid s 110(2)(c).

15 Ibid s 110(2)(d). As to such deeds see PARA 759 ante.

16 Ibid s 110(2)(e). As to deeds of discharge see PARA 710 ante.

17 Ibid s 110(2) proviso (a). The date of commencement of the Act was 1 January 1926: see PARA 690 note 8 ante.

18 Ibid s 110(2) proviso (b). See further PARA 695 note 1 ante.

19 Ibid s 110(2) proviso (c). See further PARA 695 note 5 ante.

20 Ibid s 110(2) proviso (d). As to the effect of not complying with the statutory requirements as to vesting instruments see PARA 702 ante.

21 Ibid s 110(2) proviso (i).

22 Ibid s 110(2) proviso (ii).

23 Ibid s 110(2) proviso (iii). In the case of a compound settlement, the purchaser must see that the trustees are trustees of the compound settlement: *Re Cayley and Evans' Contract* [1930] 2 Ch 143. As to who are trustees of a compound settlement see PARA 754 ante.

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887. Assumptions to be made by purchasers from personal representatives.

A purchaser¹ of a legal estate² in settled land³ from a personal representative⁴ is entitled to act on the following assumptions⁵:

- 212 (1) if the capital money, if any, payable in respect of the transaction is paid to the personal representative, that the representative is acting under his statutory or other powers⁶ and requires the money for purposes of administration⁷;
- 213 (2) if such capital money is, by the direction of the personal representative, paid to persons who are stated to be the trustees of a settlement, that such persons are the duly constituted trustees of the settlement for the purposes of the Settled Land Act 1925⁸, and that the personal representative is acting under his statutory powers during a minority⁹; and
- 214 (3) in any other case, that the personal representative is acting under his statutory or other powers¹⁰.

1 For the meaning of 'purchaser' see PARA 702 note 12 ante.

2 For the meaning of 'legal estate' see PARA 678 note 13 ante.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 For the meaning of 'personal representative' see PARA 697 note 6 ante.

5 Settled Land Act 1925 s 110(3).

6 As to the powers of a personal representative see EXECUTORS AND ADMINISTRATORS.

7 Settled Land Act 1925 s 110(3)(i). The general personal representative of a deceased tenant for life on whose death the settlement comes to an end can give a good title to a purchaser: *Re Bridgett and Hayes' Contract* [1928] Ch 163. See also PARA 786 ante.

8 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

9 Settled Land Act 1925 s 110(3)(ii). As to the statutory powers of a personal representative during a minority see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 33 et seq.

10 Ibid s 110(3)(iii).

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888. Effect of dispositions where no capital money arises.

If no capital money arises under a transaction, a disposition¹ by a tenant for life or statutory owner² in favour of a purchaser³ of a legal estate⁴ has effect under the Settled Land Act 1925⁵ notwithstanding that at the date of the transaction there are no trustees of the settlement⁶.

1 For the meaning of 'disposition' see PARA 685 note 14 ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

3 For the meaning of 'purchaser' see PARA 702 note 12 ante.

4 For the meaning of 'legal estate' see PARA 678 note 13 ante.

5 As to the effect of a disposition under the Settled Land Act 1925 see PARA 874 ante.

6 Ibid s 110(4). However, as to the position where the purchaser knows that there are no trustees see PARA 784 note 7 ante. For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xiv) Protection of Trustees and Third Persons/889. Effect where no trustees named in conveyance or assent.

889. Effect where no trustees named in conveyance or assent.

If a conveyance¹ of, or an assent relating to, land which was formerly subject to a vesting instrument² does not state who are the trustees of the settlement³ for the purposes of the Settled Land Act 1925, a purchaser of a legal estate⁴ is bound and entitled to act on the assumption that the person in whom the land was vested by the instrument was entitled to the land free from all limitations⁵, powers and charges taking effect under that settlement⁶, absolutely and beneficially, or, if so expressed in the conveyance or assent, as personal representative, or trustee of land or otherwise, and that every statement of fact in such conveyance or assent is correct⁷.

1 For the meaning of 'conveyance' see PARA 698 note 12 ante.

2 For the meaning of 'land' see PARA 680 note 1 ante. For the meaning of 'vesting instrument' see PARA 690 note 8 ante.

3 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

4 For the meaning of 'purchaser' see PARA 702 note 12 ante; and for the meaning of 'legal estate' see PARA 678 note 13 ante.

5 For the meaning of 'limitation' see PARA 708 note 4 ante.

6 For the meaning of 'settlement' see PARA 678 note 1 ante.

7 Settled Land Act 1925 s 110(5) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2). This provides a method of putting an end to a settlement on the death of the last tenant for life without executing a deed of discharge: see PARAS 709-710 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xiv) Protection of Trustees and Third Persons/890. Person conveying by way of substituted security by direction of tenant for life.

890. Person conveying by way of substituted security by direction of tenant for life.

On land being acquired by purchase or in exchange or otherwise under the statutory powers¹, any person who, by the direction of the tenant for life², so conveys it as to subject it to a legal estate³ or charge by way of legal mortgage⁴ by way of substituted security⁵ is not concerned to inquire whether or not it is proper that the land should be subjected to that legal estate or charge⁶.

- 1 As to the statutory powers of sale and exchange see PARA 827 et seq ante.
- 2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.
- 3 For the meaning of 'legal estate' see PARA 678 note 13 ante.
- 4 For the meaning of 'legal mortgage' see PARA 698 note 23 ante.
- 5 As to the land being acquired as substituted security see PARA 853 ante.
- 6 See the Settled Land Act 1925 s 82(2).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xiv) Protection of Trustees and Third Persons/891. Protection of trustees in general.

891. Protection of trustees in general.

The trustees of the settlement¹, or any of them, are not liable:

- 215 (1) for giving any consent², or for not making, bringing, taking or doing any such application, action, proceeding or thing as they might make, bring, take or do³;
- 216 (2) in case of a purchase of land with capital money arising under the Settled Land Act 1925⁴ or of an exchange, lease or other disposition⁵, for adopting any contract made by the tenant for life or statutory owner⁶, nor are they bound to inquire as to the propriety of the purchase, exchange, lease or other disposition, or answerable as regards any price, consideration or fine⁷;
- 217 (3) to see to, or answerable for, the investigation of the title⁸, or answerable for a conveyance⁹ of land, if the conveyance purports to convey the land in the proper mode¹⁰; and
- 218 (4) in respect of purchase money paid by them by the direction of the tenant for life or statutory owner to any person joining in the conveyance as a conveying party, or as giving a receipt for the purchase money, or in any other character, or in respect of any other money paid by them by the direction of the tenant for life or statutory owner on the purchase, exchange, lease or other disposition¹¹.

1 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

2 As to cases where the consent of the trustees is required see PARAS 788-789 ante.

3 Settled Land Act 1925 s 97(a). As to whether trustees are under a duty to prevent an improper disposition of which they have notice see further PARA 783 ante.

4 For the meaning of 'land' see PARA 680 note 1 ante. For the meaning of 'capital money arising under the Act' see PARA 795 ante.

5 For the meaning of 'lease' see PARA 685 note 13 ante; and for the meaning of 'disposition' see PARA 685 note 14 ante.

6 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

7 Settled Land Act 1925 s 97(b). For the meaning of 'fine' see PARA 801 note 1 ante.

8 However, the trustees are entitled to see that the tenant for life has had proper professional advice as to the investigation of title (*Re Hotham, Hotham v Doughty* [1902] 2 Ch 575, CA), and they are entitled to inquire into both the title and value of land which it is proposed to purchase (*Re Theobald* (1903) 19 TLR 536), and they are not bound to apply capital money at the direction of the tenant for life for an investment which is undesirable (*Re Gladwin's Trust* [1919] 1 Ch 232). As to the investigation of title generally see SALE OF LAND vol 42 (Reissue) PARA 137 et seq.

9 For the meaning of 'conveyance' see PARA 698 note 12 ante.

10 Settled Land Act 1925 s 97(c).

11 Ibid s 97(d).

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892. Protection of trustees in respect of authorised investments or application of capital money.

If the tenant for life or statutory owner¹ directs capital money to be invested on any authorised security or investment², the trustees of the settlement³ are not liable for the acts of any agent employed by the tenant for life or statutory owner in connection with the transaction, or for not employing a separate agent in or about the valuation of the subject of the security or the investigation of its title, or for the form of the security or of any deed conveying the subject of it to the trustees⁴, or for paying or applying any capital money by the direction of the tenant for life or statutory owner for any authorised purpose⁵.

Further, the trustees of the settlement are not liable in any way on account of any vesting instrument⁶ or other documents of title relating to the settled land⁷, other than securities⁸ for capital money, being placed in the possession of the tenant for life or statutory owner⁹, but where, if the settlement¹⁰ were not disclosed, it would appear that the tenant for life had a general power of appointment over, or was absolutely and beneficially entitled to, the settled land, they must, before they deliver the documents to him, require that notice of the last or only principal vesting instrument¹¹ be written on one of the documents under which the tenant for life acquired his title, and, if the documents are not in their possession, may require such notice to be written, but, in the latter case, they will not be liable in any way for not requiring the notice to be written¹².

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

2 As to the modes of application of capital money see PARA 808 ante.

3 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

4 Settled Land Act 1925 s 98(1).

5 Ibid s 98(2). As to the purposes for which capital money may be applied see PARAS 795 et seq ante, 891 note 8 ante.

6 For the meaning of 'vesting instrument' see PARA 690 note 8 ante.

7 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

8 For the meaning of 'securities' see PARA 693 note 1 ante.

9 As to custody of the title deeds see PARAS 771-773 ante.

10 For the meaning of 'settlement' see PARA 678 note 1 ante.

11 For the meaning of 'principal vesting instrument' see PARA 698 note 1 ante.

12 Settled Land Act 1925 s 98(3). As to the notice see PARA 772 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xiv) Protection of Trustees and Third Persons/893. Trustees' liability for personal acts only.

893. Trustees' liability for personal acts only.

Each person who is for the time being a trustee of a settlement¹ is answerable for what he actually receives only, notwithstanding his signing any receipt for conformity, and in respect of his own acts, receipts and defaults only, and is not answerable in respect of those of any other trustee, or of any banker, broker or other person, or for the insufficiency or deficiency of any securities², or for any loss not happening through his own wilful default³. He is also entitled to the ordinary protection afforded to trustees⁴.

1 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

2 For the meaning of 'securities' see PARA 693 note 1 ante.

3 Settled Land Act 1925 s 96.

4 As to the liability of trustees for the acts of their agents and co-trustees generally see TRUSTS vol 48 (2007 Reissue) PARAS 1004, 1129. As to the protection of trustees generally see TRUSTS vol 48 (2007 Reissue) PARA 914 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xiv) Protection of Trustees and Third Persons/894. Indemnity to personal representatives and others.

894. Indemnity to personal representatives and others.

Personal representatives¹, trustees or other persons who have in good faith, pursuant to the Settled Land Act 1925, executed a vesting deed, assent or other conveyance² of the settled land³, or a deed of discharge of trustees, are absolutely discharged from all liability in respect of the equitable interests⁴ and powers taking effect under the settlement⁵, and are entitled to be kept indemnified at the cost of the trust estate from all liabilities affecting the settled land, but the person to whom the settled land is conveyed (not being a purchaser⁶ taking free from them) holds the settled land upon the trusts, if any, affecting it⁷.

1 For the meaning of 'personal representative' see PARA 697 note 6 ante.

2 For the meaning of 'vesting deed' see PARA 688 note 6 ante; for the meaning of 'vesting assent' see PARA 690 note 8 ante; and for the meaning of 'conveyance' see PARA 698 note 12 ante.

3 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 For the meaning of 'equitable interests' see PARA 695 note 8 ante.

5 For the meaning of 'settlement' see PARA 678 note 1 ante.

6 For the meaning of 'purchaser' see PARA 702 note 12 ante. As to a purchaser taking free from equitable interests and powers see PARA 874 ante.

7 Settled Land Act 1925 s 99.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xiv) Protection of Trustees and Third Persons/895. Reimbursement of trustees' expenses.

895. Reimbursement of trustees' expenses.

Trustees of a settlement¹ may reimburse themselves or pay and discharge out of the trust property all expenses properly incurred by them².

1 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

2 Settled Land Act 1925 s 100. As to the rights of trustees to reimbursement generally see TRUSTS vol 48 (2007 Reissue) PARA 902 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/2. SETTLEMENTS OF LAND UNDER THE SETTLED LAND ACT 1925/(7) STATUTORY POWERS/(xiv) Protection of Trustees and Third Persons/896. Protection of purchasers under compound settlements.

896. Protection of purchasers under compound settlements.

If settled land¹ is or has been expressed to be disposed of under a compound settlement² of which trustees were appointed by the court³, and the capital money, if any, arising on the disposition⁴ is or was paid to the persons who by virtue of the order or any subsequent appointment appear to be or to have been the trustees of that settlement⁵, and if the person by or on whose behalf the disposition is or was made is or was the tenant for life or statutory owner⁶ of the land⁷ disposed of under a principal instrument mentioned in the order as constituting part of the compound settlement, then the title of the person to whom the disposition is made is not impeachable on the ground⁸:

- 219 (1) that the instruments mentioned in the order did not constitute a compound settlement⁹;
- 220 (2) that those instruments were not all the instruments at the date of the order or of the disposition constituting the compound settlement of the land disposed of¹⁰; or
- 221 (3) that any of the instruments mentioned in the order did not form part of the settlement of the land disposed of, or had ceased to form part of the settlement at the date of the disposition¹¹.

This provision does not, however, prejudice the rights of any person in respect of any estate, interest or charge under any instrument existing at the date of the order and not mentioned in it which would not have been overreached if the disposition had been made by or on behalf of the tenant for life or statutory owner under the principal instrument as such, and there had been trustees of that instrument for the purposes of the Settled Land Acts 1882 to 1890¹² or of the Settled Land Act 1925, and the capital money, if any, arising on the disposition had been paid to the trustees¹³.

These provisions operate to confirm all dispositions made before 1926, but not so as to render invalid or prejudice any court order or any title or right acquired before 1926, and operate without prejudice to any appointment already made by the court of trustees of a settlement and to the court's power in any case after 1925 to make any such appointment¹⁴.

1 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

2 As to compound settlements see PARA 681 et seq post. For the meaning of 'settlement' see PARA 678 note 1 ante.

3 This provision applies whenever the appointment was made. As to the appointment of trustees by the court see PARAS 756-757 ante.

4 For the meaning of 'disposition' see PARA 685 note 14 ante.

5 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

6 For the meaning of 'tenant for life' see PARA 671 note 5 ante; and for the meaning of 'statutory owner' see PARA 766 note 6 ante. See also PARA 761 et seq ante.

7 For the meaning of 'land' see PARA 680 note 1 ante.

- 8 See the Settled Land Act 1925 s 33(2).
- 9 Ibid s 33(2)(a).
- 10 Ibid s 33(2)(b).
- 11 Ibid s 33(2)(c).
- 12 As to these Acts see PARA 678 note 1 ante.
- 13 Settled Land Act 1925 s 33(2). For the meaning of 'capital money arising under the Act' see PARA 795 ante.
- 14 Ibid s 33(3).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/3. TRUSTS OF LAND/(1) CREATION OF TRUSTS OF LAND/897. Creation generally.

3. TRUSTS OF LAND

(1) CREATION OF TRUSTS OF LAND

897. Creation generally.

Land may be settled either by deed or by will upon a trust of land¹. By the Trusts of Land and Appointment of Trustees Act 1996, a trust of land is any trust of property (whether created before or after the commencement of the Act) which consists of or is land². References in the Act to a trust of land are to any description of trust (whether express, implied, resulting or constructive), including a trust for sale and a bare trust, but excludes settled land³. Settlements of land upon trust of land may also arise by statute⁴. Wherever land is held upon trust of land the legal estate in the land settled is, or should be, vested in the trustees⁵.

Since the enactment of the Trusts of Land and Appointment of Trustees Act 1996, the interest of a beneficiary under a trust of land is usually in the land itself, the doctrine of conversion having been abolished⁶.

1 For the meaning of 'trust of land' see PARA 676 note 5 ante. Before the Trusts of Land and Appointment of Trustees Act 1996 came into force (ie 1 January 1997: see PARA 676 note 1 ante) an alternative to creating a settlement of land under the Settled Land Act 1925 was to settle land upon trust for sale. Since that date, it is no longer possible to create settlements under the Settled Land Act 1925: see PARA 676 ante. In addition, from that date every trust for sale of property which consists of or includes land is a trust of land: see the Trusts of Land and Appointment of Trustees Act 1996 s 1; and REAL PROPERTY vol 39(2) (Reissue) PARAS 64-66. See further PARAS 676-677 ante.

2 See ibid s 1(1), (2); and PARA 676 ante.

3 See ibid s 1(3); and REAL PROPERTY vol 39(2) (Reissue) PARA 66. As to the position when there is no relevant property subject to the settlement see PARA 676 text to notes 8-9 ante.

4 As to trusts of land arising by statute see PARA 899 post.

5 As to the method of settling land upon trust of land see PARA 898 post.

6 See the Trusts of Land and Appointment of Trustees Act 1996 s 3; and REAL PROPERTY vol 39(2) (Reissue) PARA 77. The doctrine of conversion, whereby the beneficiary's interest is notionally in the proceeds of sale rather than in the land, continues to apply to trusts created by will if the testator died before the commencement of the Act: see s 3(2); and REAL PROPERTY vol 39(2) (Reissue) PARA 77.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/3. TRUSTS OF LAND/(1) CREATION OF TRUSTS OF LAND/898. Method of settling land upon trust of land.

898. Method of settling land upon trust of land.

If a legal estate in land is settled inter vivos upon a trust of land¹, the legal estate is still frequently conveyed or transferred to the trustees upon trust to sell and to hold the net proceeds of sale, and the net rents and profits of the land until sale, upon the trusts declared by a deed of even date². This practice is likely to change over time, and there is clearly scope since the introduction of trusts of land to economise with the words used.

There is no statutory provision requiring the transaction to be carried out by means of two deeds, but it is clearly convenient to carry out the transaction by two separate deeds, whether or not the land in question is registered land, so that the trustees can ensure they are able to retain the document containing the settlement. If a legal estate in land is settled by a will upon a trust of land, the personal representatives, if they are not themselves the trustees, must as soon as the estate has been fully administered assent to the land vesting in the trustees upon trust³. Even if they are themselves the trustees, they should execute an assent in their own favour⁴.

1 See PARA 897 ante. For the meaning of 'trust of land' see PARA 676 note 5 ante.

2 This is despite the provisions of the Trusts of Land and Appointment of Trustees Act 1996 which imply in every trust for sale of land a power to retain the land: see s 4; and REAL PROPERTY vol 39(2) (Reissue) PARA 66.

3 See *Re Yerburgh, Yerburgh v Yerburgh* [1928] WN 208 (a case of intestacy); and EXECUTORS AND ADMINISTRATORS.

4 See *Re King's Will Trusts, Assheton v Boyne* [1964] Ch 542, [1964] 1 All ER 833; *Re Edward's Will Trusts, Edwards v Edwards* [1982] Ch 30, [1981] 2 All ER 941, CA; and EXECUTORS AND ADMINISTRATORS.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/3. TRUSTS OF LAND/(1) CREATION OF TRUSTS OF LAND/899. Trust of land arising by statute.

899. Trust of land arising by statute.

Trusts of land¹ are imposed by statute in the following cases:

- 222 (1) if property vested in trustees by way of security becomes discharged from the right of redemption²;
- 223 (2) if by a conveyance executed, or by a will coming into operation, after 1925 land is conveyed, devised, bequeathed or appointed to persons in undivided shares³;
- 224 (3) if a legal estate (not being settled land⁴) is beneficially limited to or held in trust for any persons as joint tenants⁵;
- 225 (4) if immediately before 1926 land was held at law or in equity in undivided shares vested in possession⁶;
- 226 (5) if there was a tenancy by entireties existing immediately before 1926⁷; and
- 227 (6) on the death after 1925 of a person intestate⁸.

1 For the meaning of 'trust of land' see PARA 676 note 5 ante; definition applied by the Interpretation Act 1978 s 5, Sch 1. As to when land is held on trust of land see PARA 676 ante. For the meaning of 'land' see REAL PROPERTY vol 39(2) (Reissue) PARA 77. For the definition of 'land' in the Settled Land Act 1925 see PARA 680 note 1 ante.

2 See the Law of Property Act 1925 s 31(1) (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1028.

3 See ibid s 34(2), (3) (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 207 et seq.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante; definition applied by ibid s 205(1)(xxvi).

5 See ibid s 36(1) (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 190.

6 See ibid s 39(4), Sch 1 Pt IV (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 55 et seq.

7 See ibid ss 36(1), 39(6), Sch 1 Pt VI (as amended); and REAL PROPERTY vol 39(2) (Reissue) PARA 55 et seq.

8 See the Administration of Estates Act 1925 s 33(1) (as amended); and EXECUTORS AND ADMINISTRATORS.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/3. TRUSTS OF LAND/(2) TRUSTEES OF LAND/(i) Appointment of Trustees of Land/900. Appointment of trustees of a trust of land where there is a separate trust of the proceeds of sale.

(2) TRUSTEES OF LAND

(i) Appointment of Trustees of Land

900. Appointment of trustees of a trust of land where there is a separate trust of the proceeds of sale.

The persons having power to appoint new trustees of land¹ are bound to appoint the same persons (if any) who are for the time being trustees of any trust of the proceeds of sale of the land, whenever the trust of land and the trust of proceeds of sale are created².

It is not necessary to have more than one trustee of a trust of land except where capital money arises on the transaction, in which case either there must be at least two trustees or the trustee must be a trust corporation³. Where a settlement or disposition on trust of land is made or comes into operation after 1925, the number of the trustees must not exceed four⁴. If more than four persons are named as trustees, the first four named who are able and willing to act will alone be the trustees and the other persons named are not to be trustees unless appointed on the occurrence of a vacancy⁵.

1 For the meaning of 'trustees of land' and 'trust of land' see PARA 676 note 5 ante; definitions applied by the Interpretation Act 1978 s 5, Sch 1.

2 See the Law of Property Act 1925 s 24(1), (3) (substituted by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 4). A purchaser is not concerned to see that this provision has been complied with: see the Law of Property Act 1925 s 24(2) (as so substituted). As to the manner of appointment of the trustees see PARA 901 post.

3 See the Law of Property Act 1925 s 27(2) (as substituted and amended); and TRUSTS vol 48 (2007 Reissue) PARA 799. This provision does not affect the right of a sole personal representative as such to give valid receipts for, or direct the application of, proceeds of sale or other capital money: see s 27(2) (as substituted and amended); and TRUSTS vol 48 (2007 Reissue) PARA 799. For the meaning of 'trust corporation' see PARA 705 note 6 ante.

4 See the Trustee Act 1925 s 34(2) (as amended); and TRUSTS vol 48 (2007 Reissue) PARAS 804, 822.

5 See ibid s 34(2)(a); and TRUSTS vol 48 (2007 Reissue) PARA 804. The number of trustees may not be increased beyond four: see s 34(2)(b); and TRUSTS vol 48 (2007 Reissue) PARA 822. This restriction does not apply in the case of land vested in trustees for charitable, ecclesiastical or public purposes, or where the net proceeds of sale are held for like purposes: see s 34(3); and TRUSTS vol 48 (2007 Reissue) PARA 804. If on 1 January 1926 there were more than four trustees holding land on trust for sale, then, except where as the result of the appointment the number was reduced to four or less, no new trustees could be appointed until the number was reduced to less than four and thereafter the number cannot be increased beyond four: see s 34(1).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/3. TRUSTS OF LAND/(2) TRUSTEES OF LAND/(i) Appointment of Trustees of Land/901. Appointment of new trustees of land.

901. Appointment of new trustees of land.

Appointments of new trustees of land¹ and of new trustees of any trust of the proceeds of sale of the land must, subject to any order of the court, be effected by separate instruments, but in such manner as to secure that the same persons become trustees of land and trustees of the trust of the proceeds of sale².

Where new trustees of land are appointed, a memorandum of the persons who are for the time being the trustees of the land must be indorsed on or annexed to the conveyance by which the land was vested in the trustees of land; and that conveyance must be produced to the persons who are for the time being the trustees of the land by the person in possession of it in order for that to be done when the trustees require its production³.

1 For the meaning of 'trustees of land' see PARA 676 note 5 ante; definition applied by the Interpretation Act 1978 s 5, Sch 1. 'New trustee' includes an additional trustee: Trustee Act 1925 s 68(17).

2 Ibid s 35(1) (substituted by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3).

3 Trustee Act 1925 s 35(3) (substituted by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3). There is no statutory provision requiring a memorandum to be indorsed on or annexed to the conveyance on the discharge of a trustee under the Trustee Act 1925 s 39(1) (as amended) (see TRUSTS vol 48 (2007 Reissue) PARA 891) but the same course should be followed in that case.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/3. TRUSTS OF LAND/(2) TRUSTEES OF LAND/(ii) Powers of Trustees of Land/902. Necessary consents.

(ii) Powers of Trustees of Land

902. Necessary consents.

When executing a trust of land¹ or exercising any statutory or other powers, trustees must comply strictly with any provisions of the instrument creating the trust with regard to obtaining the consent of any person or persons to the execution of that trust or the exercise of those powers².

If a disposition³ creating a trust of land requires the consent of more than two persons to the exercise by the trustees of any function relating to the land, the consent of any two of them to the exercise of the function is sufficient in favour of a purchaser⁴.

Where the person whose consent is required is suffering from mental disorder, the trustees must obtain the consent of his or her receiver⁵.

Trustees of land in carrying out any function relating to land must, so far as practicable, consult the beneficiaries of full age and beneficially entitled to an interest in possession in the land and, so far as consistent with the general interests of the trust, give effect to the wishes of those beneficiaries, or (in case of dispute) of the majority (according to the value of their combined interests)⁶.

1 For the meaning of 'trust of land' see PARA 676 note 5 ante. See also PARA 897 et seq ante.

2 See *Bateman v Davis* (1818) 3 Madd 98; and TRUSTS vol 48 (2007 Reissue) PARA 1036. As to applications to the court where consent cannot be obtained see PARA 905 post. As to the protection of a purchaser if consents are not obtained see PARA 906 post.

3 For the meaning of 'disposition' see PARA 665 note 8 ante.

4 See the Trusts of Land and Appointment of Trustees Act 1996 s 10; and TRUSTS vol 48 (2007 Reissue) PARA 1036. As to the application of this rule to trustees of land held on charitable, ecclesiastical or public trusts, personal representatives and children see TRUSTS vol 48 (2007 Reissue) PARA 1036.

5 A receiver of the property of a person with a mental disorder appointed under the Mental Health Act 1983 s 99 may be authorised to consent to the exercise by trustees of their powers: see ss 99(2), 96(1)(k); and MENTAL HEALTH vol 30(2) (Reissue) PARA 683 et seq.

6 See the Trusts of Land and Appointment of Trustees Act 1996 s 11(1); and TRUSTS vol 48 (2007 Reissue) PARA 1036. This rule does not apply in certain circumstances: see s 11(2); and TRUSTS vol 48 (2007 Reissue) PARA 1036. The rule also does not apply to annuitants or to personal representatives holding land on trust for sale: see ss 18(1), 22(3); and TRUSTS vol 48 (2007 Reissue) PARA 739.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/3. TRUSTS OF LAND/(2) TRUSTEES OF LAND/(ii) Powers of Trustees of Land/903. General powers of trustees.

903. General powers of trustees.

In the case of every trust for sale of land¹ created by a disposition² there is to be implied, despite any provision to the contrary made by the disposition, a power for the trustees to postpone sale of the land³. In cases where a trust of land is implied by statute, the trustees do not have a duty to sell the property⁴.

For the purpose of exercising their functions as trustees, the trustees of land have in relation to the land subject to the trust all the powers of an absolute owner⁵.

Where in the case of any land subject to a trust of land each of the beneficiaries interested in the land is a person of full age and capacity who is absolutely entitled to the land, the trustees may convey the land to the beneficiaries even though they have not required the trustees to do so⁶.

The trustees of land have the power to purchase a legal estate in any land in England or Wales and may exercise this power to purchase land by way of investment, for occupation by any beneficiary, or for any other reason⁷.

Trustees of land may, where beneficiaries of full age are absolutely entitled in undivided shares to land subject to the trust, partition the land, or any part of it, and provide (by way of mortgage or otherwise) for the payment of any equality money⁸. The trustees must, prior to the exercise of this power, obtain the consent of each such beneficiary⁹.

The trustees of land may by power of attorney, delegate to any beneficiary of full age and beneficially entitled to an interest in possession in land subject to the trust any of their functions as trustees which relate to the land¹⁰. Such a delegation may be for any period, definite or indefinite¹¹. Where any function has been delegated to a beneficiary under the statutory power, the trustees are jointly and severally liable for any act or default of the beneficiary in the exercise of the function if, but only if, the trustees did not exercise reasonable care in deciding to delegate the function to the beneficiary¹².

1 As to trusts for sale see REAL PROPERTY vol 39(2) (Reissue) PARA 55. For the meaning of 'land' see REAL PROPERTY vol 39(2) (Reissue) PARA 77.

2 For the meaning of 'disposition' see PARA 665 note 8 ante.

3 See the Trusts of Land and Appointment of Trustees Act 1996 s 4(1); and REAL PROPERTY vol 39(2) (Reissue) PARA 66. The trustees are not liable in any way for postponing sale of the land, in the exercise of their discretion, for an indefinite period: see s 4(1); and REAL PROPERTY vol 39(2) (Reissue) PARA 66. This provision does not affect any liability incurred by trustees before 1 January 1997: see s 4(3); and REAL PROPERTY vol 39(2) (Reissue) PARA 66.

4 See ibid s 5(1), Sch 2; and REAL PROPERTY vol 39(2) (Reissue) PARA 66. For the meaning of 'trust of land' see PARA 676 note 5 ante.

5 See ibid s 6(1); and TRUSTS vol 48 (2007 Reissue) PARA 1035. For the meaning of 'trustees of land' see PARA 676 note 5 ante.

6 See ibid s 6(2); and TRUSTS vol 48 (2007 Reissue) PARA 1035. Where land is so conveyed, the beneficiaries must do whatever is necessary to secure that it vests in them, and if they fail to do so, the court may make an order requiring them to do so: see s 6(2); and TRUSTS vol 48 (2007 Reissue) PARA 1035. There is no requirement for consultation with beneficiaries in relation to the exercise of this power: see s 11(2)(c); and TRUSTS vol 48 (2007 Reissue) PARA 1036.

7 See *ibid* s 6(3), (4); and TRUSTS vol 48 (2007 Reissue) PARA 1035. In exercising these powers, the trustees must have regard to the rights of the beneficiaries, and must not act in contravention of, or of any order made in pursuance of, any other enactment or any rule of law or equity: see s 6(5), (6); and TRUSTS vol 48 (2007 Reissue) PARA 1035. As to the effect of restrictions, limitations or conditions in other enactments see s 6(8); and TRUSTS vol 48 (2007 Reissue) PARA 1035.

8 See *ibid* s 7(1); and TRUSTS vol 48 (2007 Reissue) PARA 1046. As to the method of giving effect to any such partition see s 7(2); and TRUSTS vol 48 (2007 Reissue) PARA 1046. As to where a share of land is affected by an incumbrance or is vested in a child see s 7(4), (5); and TRUSTS vol 48 (2007 Reissue) PARA 1046.

9 See *ibid* s 7(3); and TRUSTS vol 48 (2007 Reissue) PARA 1046.

10 See *ibid* s 9(1); and TRUSTS vol 48 (2007 Reissue) PARA 987. As to the position when a beneficiary ceases to be beneficially entitled to an interest in possession in land see s 9(4); and TRUSTS vol 48 (2007 Reissue) PARA 987. Beneficiaries to whom functions have been delegated under the statutory power are, in relation to the exercise of the functions, in the same position as trustees, with the same duties and liabilities, but such beneficiaries are not regarded as trustees for any other purposes (including, in particular, the purposes of any enactment permitting the delegation of functions by trustees or imposing requirements relating to the payment of capital money): see s 9(7); and TRUSTS vol 48 (2007 Reissue) PARA 987.

11 See *ibid* s 9(4); and TRUSTS vol 48 (2007 Reissue) PARA 987.

12 See *ibid* s 9(8).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/3. TRUSTS OF LAND/(2) TRUSTEES OF LAND/(ii) Powers of Trustees of Land/904. Miscellaneous powers.

904. Miscellaneous powers.

In addition to the foregoing powers, trustees of land have all the powers conferred on ordinary trustees¹, including the following, the operation of which may, except as specifically stated, be excluded by the expression of a contrary intention in the settlement²:

- 228 (1) power to sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any conditions respecting title or evidence of title or other matters as the trustees think fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to resell, without being answerable for any loss³;
- 229 (2) power to sell or dispose of part of the land, whether the division is horizontal, vertical or made in any other way⁴;
- 230 (3) if they are authorised by the instrument creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, power to raise the money required by sale, conversion, calling in or mortgage of all or any part of the trust property for the time being in possession⁵;
- 231 (4) power to insure any personal property against loss and damage, and to pay the premiums for such insurance out of its income or out of the income of any other property subject to the same trusts without obtaining the consent of any person entitled to the income⁶; and
- 232 (5) power to deposit any documents held by them relating to the trust or the trust property with any banker or banking company or any other company whose business includes the undertaking of the safe custody of documents, any sum payable in respect of such deposit being payable only out of the income of the trust property⁷.

1 As to the powers of trustees see the Trustee Act 1925 Pt II (ss 12-33) (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 971 et seq.

2 See *ibid* s 69(2).

3 See *ibid* s 12(1) (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1042. Trustees for sale have the same power as a tenant for life to leave part of the purchase money on mortgage: see s 10(2) (as amended); and PARA 833 ante. The power of the trustees to sell is subject to depreciatory conditions: see s 13; and TRUSTS vol 48 (2007 Reissue) PARA 1044.

4 See *ibid* s 12(2) (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1042. See also note 3 supra.

5 See *ibid* s 16(1); and TRUSTS vol 48 (2007 Reissue) PARA 1055. This provision applies notwithstanding anything to the contrary in the instrument creating the trust: see s 16(2); and TRUSTS vol 48 (2007 Reissue) PARA 1055.

6 See *ibid* s 19(1) (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1047. As to the application of the insurance money see TRUSTS vol 48 (2007 Reissue) PARA 1048.

7 See *ibid* s 21. In special circumstances trustees may be justified in depositing title deeds with their solicitors: see *Field v Field* [1894] 1 Ch 425; and TRUSTS vol 48 (2007 Reissue) PARA 959.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/3. TRUSTS OF LAND/(2) TRUSTEES OF LAND/(ii) Powers of Trustees of Land/905. Applications to the court.

905. Applications to the court.

Any person who is a trustee of land¹ or has an interest in property subject to a trust of land² may make an application to the court for an order relating to the exercise by the trustees of any of their functions (including an order relieving them of any obligation to obtain the consent of, or to consult, any person in connection with the exercise of their functions), or declaring the nature or extent of a person's interest in the property subject to the trust³.

1 For the meaning of 'trustees of land' see PARA 676 note 5 ante.

2 For the meaning of 'trust of land' see PARA 676 note 5 ante.

3 See the Trusts of Land and Appointment of Trustees Act 1996 s 14(1), (2). The court may not make an order under this provision as to the appointment or removal of trustees: see s 14(3). As to the matters to which the court is to have regard in determining an application for an order see s 15. See generally TRUSTS vol 48 (2007 Reissue) PARA 1038. As to applications to the court by a trustee of a bankrupt's estate see the Insolvency Act 1986 s 335A (as added); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 647.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/3. TRUSTS OF LAND/(2) TRUSTEES OF LAND/(iii) Purchaser protection/906. Purchaser protection.

(iii) Purchaser protection

906. Purchaser protection.

A purchaser of land which is or has been subject to a trust need not be concerned to see that the trustees have obtained the necessary consents, or that they have consulted with the beneficiaries or had regard to their rights as they are required to do by the Trusts of Land and Appointment of Trustees Act 1996¹.

Where there is a trust of the proceeds of sale of land, and the persons having power to appoint new trustees have failed to ensure that they have appointed as trustees of land the same persons as are the trustees of the proceeds of sale, this does not affect a purchaser².

Notwithstanding anything to the contrary in the trust instrument (either relating to the land or to the proceeds of sale), the proceeds of sale or other capital money must not be paid to or applied by the direction of fewer than two persons as trustees, except where the trustee is a trust corporation³. A purchaser of a legal estate from trustees of land is not concerned with the trusts affecting the land, the net income of the land or the proceeds of sale of the land whether or not those trusts are declared by the same instrument as that by which the trust of land is created⁴.

Certain provisions of the Trusts of Land and Appointment of Trustees Act 1996 expressly apply to the trusts of the proceeds of sale⁵.

Where trustees purport to delegate functions relating to any land to a person by power of attorney under the Trusts of Land and Appointment of Trustees Act 1996⁶, and another person in good faith deals with him in relation to the land, he is presumed in favour of that other person to have been a person to whom the functions could be delegated unless that other person has knowledge at the time of the transaction that he was not such a person⁷.

1 See the Trusts of Land and Appointment of Trustees Act 1996 s 16(1); and TRUSTS vol 48 (2007 Reissue) PARA 1036. As to the necessary consents and consultation see PARA 902 ante. As to the consequences of contravention by the trustees see s 16(2). As to the duty of trustees to bring any limitation of their powers to the notice of a purchaser see s 16(3). As to the position of a purchaser buying from a beneficiary to whom the trustees have conveyed the property see s 16(4), (5). As to the application of this provision to land held on charitable, ecclesiastical or public trusts, and to registered land see s 16(6), (7). See further TRUSTS vol 48 (2007 Reissue) PARAS 1035-1036.

2 See the Law of Property Act 1925 s 24 (as substituted); and PARA 900 ante.

3 Ibid s 27(2) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 4(1), (8)). For the meaning of 'trust corporation' see PARA 705 note 6 ante. This provision does not affect the right of a sole personal representative as such to give valid receipts for, or direct the application of, the proceeds of sale or other capital money, nor, except where capital money arises on the transaction, render it necessary to have more than one trustee: see the Law of Property Act 1925 s 27(2) (as so amended).

4 See ibid s 27(1) (substituted by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 4(1), (8)).

5 See ibid s 17(1); and REAL PROPERTY vol 39(2) (Reissue) PARA 67. The provisions are s 6(3) (trustees' power to purchase land in England and Wales), s 14 (applications to court): see s 17(1); and PARAS 903, 905 ante. For the meaning of 'trust of proceeds of sale of land' see REAL PROPERTY vol 39(2) (Reissue) PARA 67. A settlement still governed by the Settled Land Act 1925 cannot be a trust of proceeds of sale of land: see the Trusts of Land and Appointment of Trustees Act 1996 s 17(5); and REAL PROPERTY vol 39(2) (Reissue) PARA 67.

6 See PARA 903 text and notes 10-12 ante.

7 See the Trusts of Land and Appointment of Trustees Act 1996 s 9(2); and TRUSTS vol 48 (2007 Reissue) PARA 987. It is conclusively presumed in favour of any purchaser whose interest depends on the validity of that transaction that that other person dealt in good faith and did not have such knowledge if that other person makes a statutory declaration to that effect before or within three months after the completion of the purchase: see s 9(2); and TRUSTS vol 48 (2007 Reissue) PARA 987.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(1) CONSTITUTION OF THE SETTLEMENT/907. Constitution generally.

4. SETTLEMENTS OF PERSONALTY

(1) CONSTITUTION OF THE SETTLEMENT

907. Constitution generally.

A voluntary settlement is fully constituted when the settlor has done everything necessary to be done by him to transfer the property to trustees upon trusts declared by him, or when he has declared himself to be a trustee of the property¹.

Where money and other property passes by delivery, only one instrument is necessary, but in other cases deeds of transfer or assignment may be required².

1 As to completed and incomplete gifts see PARA 615 ante; and GIFTS vol 52 (2009) PARA 267 et seq. As to when writing is required in respect of a declaration of trust or a disposition of an equitable interest or trust see the Law of Property Act 1925 s 53(1)(b), (c); CHOSES IN ACTION vol 13 (2009) PARA 29; GIFTS vol 52 (2009) PARA 240. If the property is held on a bare trust for the settlor, and is transferred at his direction, no separate assignment of his beneficial interest is necessary: *Vandervell v IRC*[1967] 2 AC 291, [1967] 1 All ER 1, HL.

2 See PARA 908 et seq post. As to delivery see GIFTS vol 52 (2009) PARA 237 et seq; and as to the transfer of things in action generally see CHOSES IN ACTION vol 13 (2009) PARA 14 et seq. A settlement may itself operate as an effective disposition of the settlor's equitable interest where the legal title was outstanding at the date of the settlement: *Re Wale, Wale v Harris*[1956] 3 All ER 280, [1956] 1 WLR 1346.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(1) CONSTITUTION OF THE SETTLEMENT/908. Debts.

908. Debts.

A debt is settled by assigning it to the trustees of the settlement. Such an assignment, coupled with notice of it to the debtor in writing, vests in the trustees the legal right to the debt and the remedies for it, with power to give a good discharge¹.

1 See the Law of Property Act 1925 s 136(1); and CHOSES IN ACTION vol 13 (2009) PARA 72.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(1) CONSTITUTION OF THE SETTLEMENT/909. Mortgage debts.

909. Mortgage debts.

Money secured by a mortgage is settled by transferring it to the trustees by one deed (without disclosing that the mortgage debt is trust money), and declaring the trusts by another. This avoids the inconvenience that would otherwise arise on the sale or redemption of the mortgaged property of having to produce and acknowledge the right to production of the deed containing the trusts¹. For similar reasons a portion charged on land is settled by assigning it to the trustees of the settlement by a separate deed².

1 *Capper v Terrington* (1844) 1 Coll 103; *Dobson v Land* (1851) 4 De G & Sm 575. See also MORTGAGE vol 77 (2010) PARAS 651, 654.

2 As to portions see PARA 727 et seq ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(1) CONSTITUTION OF THE SETTLEMENT/910. Stocks and shares.

910. Stocks and shares.

Stocks and shares in public or private companies are settled by transferring them to the trustees in accordance with the regulations of the particular company¹. The transfer of government stocks and funds is effected in the books of the Bank of England², while certain bonds and securities may be transferred by delivering them to the trustees³. The transfer of local government stock is regulated by special provisions⁴. In each case the settlement normally recites that the transfer has been or is intended to be made, as the case may be⁵.

1 See GIFTS vol 52 (2009) PARA 233.

2 See FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 807.

3 See GIFTS vol 52 (2009) PARAS 239, 273. Premium savings bonds are not transferable: see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1362 et seq.

4 See LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq.

5 An erroneous recital that investments have been transferred does not invalidate the settlement if, on its true construction, it operates as an equitable assignment of the settlor's interest in them: *Re Wale, Wale v Harris* [1956] 3 All ER 280, [1956] 1 WLR 1346.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(1) CONSTITUTION OF THE SETTLEMENT/911. Reversionary interests.

911. Reversionary interests.

A reversionary interest is settled by being assigned to the trustees of the settlement, who should perfect their title, as in the case of other choses in action, by giving notice in writing of the assignment to the trustees of the instrument under which the reversionary interest is derived¹. The principle on which the court acts in discouraging dealing by expectant heirs with their reversionary interests has no application to the case of a settlement by an expectant heir².

1 See CHOSES IN ACTION vol 13 (2009) PARA 40 et seq.

2 *Shafto v Adams* (1864) 4 Giff 492. Cf MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 855-858.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(1) CONSTITUTION OF THE SETTLEMENT/912. Share of personality under or in default of appointment.

912. Share of personality under or in default of appointment.

A fund or share of a fund of personality to which the settlor is entitled, either under or in default of appointment, in the estate of a testator or intestate is settled by assigning to the trustees the settlor's interest. This should be described with precision, since settlements of an interest in a fund derived under a will by survivorship or otherwise do not include a share in the fund coming to the settlor as next of kin of another beneficiary under the will, and shares taken under appointments do not pass under settlements which deal with shares in the same property taken in default of appointment¹.

1 *Re Newbolt's Trust* (1856) 4 WR 735; *Parkinson v Dashwood* (1861) 30 Beav 49; *Edwards v Broughton* (1863) 32 Beav 667; cf *Smith v Osborne* (1857) 6 HL Cas 375; *Re Walpole's Marriage Settlement, Thomson v Walpole* [1903] 1 Ch 928; *Re Dowie's Will Trusts, Re Marriage Settlement of September 24 1936, Barlas v Pennefather* [1949] Ch 547, [1949] 1 All ER 968. In the case of a settlement for valuable consideration a purported assignment of an interest in a fund to which the settlor has no title will catch any interest in the fund subsequently acquired by him: *Re Harper's Settlement, Williams v Harper* [1919] 1 Ch 270. See ESTOPPEL vol 16(2) (Reissue) PARA 1033.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(1) CONSTITUTION OF THE SETTLEMENT/913. Insurance policies.

913. Insurance policies.

Policies of insurance are frequently made the subject of settlements¹. The settlement may either declare the trusts of money to arise from a policy which is taken out by the trustees in their own names², or the settlor may take out the policy in his own name and assign it to the trustees to be held upon the trusts declared by the settlement³. The trustees should give to the insurance company written notice of the assignment⁴. An assignment of a policy generally carries with it any bonuses that may accrue⁵, although the settlor may be entitled to exercise any option that is given to him by the rules of the company to apply the bonuses in reduction of premiums or receive them in cash⁶. Where bonuses are excluded from the settlement, the trustees who receive them are not allowed to retain them, as against the personal representatives of the settlor, to make good a misappropriation of trust funds by him⁷.

The settlement usually contains covenants with the trustees by the person whose life is assured not to avoid the policy, to pay premiums, to effect a substituted policy if necessary, and not to prejudice the trustees' rights to the policy money. If the covenant is merely to keep up the policy, there is no right of action against the covenantor's estate on the forfeiture of the policy by reason of a breach of the stipulations contained in it⁸.

Failure to effect a substituted policy will render the covenantor liable in damages to the trustees, even if his life has in fact become uninsurable⁹. If, in breach of his covenant, a settlor allows a policy to become void, neither he nor his assigns can claim any interest in other property comprised in the settlement until the loss has been made good¹⁰. Failure to pay premiums gives the trustees a right to substantial damages¹¹, and, should the covenantor become bankrupt, his contingent future liability to pay premiums is a debt that may be proved in his bankruptcy¹². It is desirable always to give the trustees power to surrender the policy for a fully paid up one of a smaller amount.

1 As to life policies see INSURANCE vol 25 (2003 Reissue) PARA 525 et seq. A covenant by an intending husband to effect a policy with an insurance company is not satisfied by effecting a less beneficial policy with a friendly society: *Courtenay v Courtenay* (1846) 3 Jo & Lat 519.

2 *Tidswell v Ankerstein* (1792) Peake 151; *Collett v Morrison* (1851) 9 Hare 162. See also INSURANCE vol 25 (2003 Reissue) PARA 543.

3 See INSURANCE vol 25 (2003 Reissue) PARA 545 et seq.

4 See the Policies of Assurance Act 1867 s 3; and INSURANCE vol 25 (2003 Reissue) PARA 549. As to assignments of policies generally see INSURANCE vol 25 (2003 Reissue) PARA 545 et seq. A policy of insurance of his life subsequently effected by the settlor may be caught by a covenant by him to settle after-acquired property: *Re Turcan* (1888) 40 ChD 5, CA.

5 *Courtney v Ferrers* (1827) 1 Sim 137; *Parkes v Bott* (1838) 9 Sim 388; *Gilly v Burley* (1856) 22 Beav 619; *Warren v Wybault* (1866) 12 Jur NS 639. Bonuses do not pass if the policies are only securities for a specified sum which is settled: *Domville v Lamb* (1853) 1 WR 246. Cf *Re Armstrong's Trusts* (1857) 3 K & J 486, not following *Plunkett v Mansfield* (1845) 2 Jo & Lat 344.

6 *Hughes v Searle* [1885] WN 79. Cf *Gilly v Burley* (1856) 22 Beav 619.

7 *Hallett v Hallett* (1879) 13 ChD 232. The case is different where the claim is made under the trusts of the settlement: *Re Weston, Davies v Tagart* [1900] 2 Ch 164.

8 *Dormay v Borrodaile* (1847) 10 Beav 335.

9 *Re Arthur, Arthur v Wynne* (1880) 14 ChD 603.

10 *Re Jewell's Settlement, Watts v Public Trustee* [1919] 2 Ch 161.

11 *Schlesinger and Joseph v Mostyn* [1932] 1 KB 349.

12 See the Insolvency Act 1986 s 382(1), (3) (as amended); and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 491.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(1) CONSTITUTION OF THE SETTLEMENT/914. Personal chattels.

914. Personal chattels.

Personal chattels are sometimes made the subject of a settlement¹. Such a settlement should provide that the beneficiaries should have the enjoyment of the settled chattels, and that the trustees should not interfere with their custody, management or legal ownership, or be responsible for their custody, preservation or insurance against fire or other damage or loss. It is expedient to provide for the substitution of new articles of equal value for those originally settled².

The settled chattels need not be specifically described, but they must be described in such a way as to be clearly identifiable³. It is often convenient to enumerate them in a schedule.

A settlement, on marriage, of chattels does not require registration as a bill of sale⁴.

The transfer of the chattels may usually be effected simply by delivery⁵.

1 See also PERSONAL PROPERTY vol 35 (Reissue) PARA 1230. As to the position on bankruptcy where the chattels are in the reputed ownership of the bankrupt see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 400 et seq. A settlement of a house together with the fixtures and fittings does not include household furniture (*Simmons v Simmons* (1847) 6 Hare 352), and articles for the settlement of household goods or utensils of household stuff did not attach to household goods in a building employed by the settlor as a hospital (*Pratt v Jackson* (1726) 1 Bro Parl Cas 222), but 'furniture' may include silver plate (*Re Torrington's Settled Estates* (1924) 157 LT Jo 408). As to the powers and duties of trustees under such a settlement see PARA 940 post. As to the settlement of chattels to devolve with realty see PARA 937 et seq post.

2 For a case where fresh furniture was substituted see *Lane v Grylls* (1862) 6 LT 533. As to the sale of personal chattels settled without reference to settled land see PARA 941 post.

3 *Dean v Brown* (1826) 5 B & C 336.

4 See the Bills of Sale Act 1878 s 4; and FINANCIAL SERVICES AND INSTITUTIONS vol 50 (2008) PARAS 1656, 1658. As to marriage settlements see PARA 628 et seq ante.

5 See GIFTS vol 52 (2009) PARAS 237-239.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(i) Life Interests/915. Life interests generally.

(2) BENEFICIAL INTERESTS

(i) Life Interests

915. Life interests generally.

In a marriage settlement of personalty the first life interest in the settled property is usually taken by whichever party to the marriage brings the property into settlement¹. If both parties bring property into settlement, usually each takes the first life interest in the property settled by or on behalf of him or her and, after the death of either spouse, the survivor is given a life interest in the entire fund².

1 As to marriage settlements see PARA 628 et seq ante.

2 A divorced woman survives her coverture (*Re Crawford's Settlement, Cooke v Gibson*[1905] 1 Ch 11), but a marriage settlement, in so far as it is not varied by the proper tribunal, remains unaffected by the dissolution of the marriage (*Fitzgerald v Chapman*(1875) 1 ChD 563; *Burton v Sturgeon*(1876) 2 ChD 318, CA). As to variation of marriage settlements on divorce see PARA 603 note 1 ante. Sometimes the interest of the survivor is made to determine on remarriage. A trust to pay the income of the husband's fund, after his death, to the wife during her life or until she marries again is not determined, after the marriage has been dissolved, by her remarriage during the lifetime of the first husband: *Re Monro's Settlement, Monro v Hill*[1933] Ch 82. See, however, to the contrary *Re Mathew's Trusts* (1876) 24 WR 960. See also *Re Pilkington's Settlement, Pilkington v Wright* (1923) 129 LT 629; and PARA 936 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(i) Life Interests/916. Protected life interests.

916. Protected life interests.

A provision in a settlement which reserves to the settlor a life interest in property settled by him determinable on his bankruptcy is void as against his trustee in bankruptcy¹, but a provision reserving to the settlor a life interest in such property determinable if he assigns, charges or incumbers it is valid². A person bringing property into settlement may settle it so as to give to any other person taking an interest under the settlement a life interest determinable on bankruptcy³, or on any attempted alienation or other disposition⁴, and it is by no means unusual to give the husband such a protected life interest in the property brought into the settlement by his wife⁵.

1 See BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 429.

2 *Re Walsh's Estate* [1905] 1 IR 261; *Re Perkins' Settlement Trusts, Leicester-Warren v Perkins* [1912] WN 99. See BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 398. Once it has taken effect, the limitation over is not avoided by the subsequent bankruptcy of the settlor: *Re Detmold, Detmold v Detmold* (1889) 40 ChD 585.

3 *Mackintosh v Pogose* [1895] 1 Ch 505. As to conditions for forfeiture on bankruptcy see generally BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 398.

4 *Re Throckmorton, ex p Eyston* (1877) 7 ChD 145, CA.

5 Where the husband took a life interest determinable on bankruptcy followed by a gift after his death, on failure of issue of the marriage, to the wife's next of kin, the husband's trustee in bankruptcy was entitled to the income during the interval between the husband's bankruptcy and death: *Frank v Mackay* (1873) IR 7 Eq 287; *Upton v Brown* (1879) 12 ChD 872. Where the gift over is expressed to take effect upon the happening of some, but not all, of the events on which the prior life interest is determinable, it may be possible to fill the gap by construction (*Re Muggeridge's Trusts* (1860) John 625; *Re Akeroyd's Settlement, Roberts v Akeroyd* [1893] 3 Ch 363, CA; *O'Donoghue v O'Donoghue* [1906] 1 IR 482); but this cannot be done if, from the form of the trusts, it is impossible to say what trust should be inserted to fill the gap (*Re Cochrane, Shaw v Cochrane* [1955] Ch 309, [1955] 1 All ER 222). As to supplying words see *Re Whitrick, Sutcliffe v Sutcliffe* [1957] 2 All ER 467, [1957] 1 WLR 884, CA.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(i) Life Interests/917. Statutory protective trusts.

917. Statutory protective trusts.

A determinable life interest is now generally given¹ by directing that the trustees are to hold the income on protective trusts for the benefit of the principal beneficiary during his life or for some lesser period². In such a case the income, without prejudice to any prior interest, must be held on the statutory protective trusts³, namely upon trust for the principal beneficiary during the specified period or until he, whether before or after the termination of any prior interest, does or attempts⁴ to do or suffers⁵ any act or thing, or until any event happens, other than an advance under any statutory or express power⁶, by which, if the income were payable to him absolutely during the specified period, he would be deprived of the right to receive the income or any part of it⁷; and, if such trust should fail or determine during the specified period, then, during the residue of that period, the income is applicable, at the discretion of the trustees, for the maintenance or support, or otherwise for the benefit, of any one or more of the following persons, namely the principal beneficiary and his or her wife or husband, if any, and his or her children or more remote issue⁸, if any, or, if there is no wife or husband or issue⁹ of the principal beneficiary in existence, the principal beneficiary and the persons who would if he were actually dead, be entitled to the trust property or its income¹⁰.

1 As to the construction of express forfeiture clauses and provisions for determination of life interests in wills see eg *Re Mair, Williamson v French* [1909] 2 Ch 280; *Re Walker, Public Trustee v Walker* [1939] Ch 974, [1939] 3 All ER 902. See further WILLS vol 50 (2005 Reissue) PARA 748 et seq. As to conditions of defeasance in settlements generally see PARA 740 et seq ante.

2 If no period is specified, the gift may be construed as an indefinite gift of income, entitling the beneficiary to call for the capital: cf *Re Wittke, Reynolds and Gorst v King Edward's Hospital Fund for London and Custodian of Enemy Property* [1944] Ch 166, [1944] 1 All ER 383.

3 Ie the trusts set out in the Trustee Act 1925 s 33 (as amended) (see the text and notes 7-10 infra), which does not apply to trusts which came into operation before 1926 (see s 33(2)) and does not operate to validate any trust which would, if contained in the instrument creating the trust, be liable to be set aside (see s 33(3)).

4 See *Re Porter, Coulson v Capper* [1892] 3 Ch 481, where a post-nuptial settlement, although partially inoperative, was held to be an attempt to assign a reversionary interest.

5 'Suffer' applies to an involuntary proceeding: see *Roffey v Bent* (1867) LR 3 Eq 759; *Re Throckmorton, ex p Eyston* (1877) 7 ChD 145, CA; *Re Sartoris Estate, Sartoris v Sartoris* [1892] 1 Ch 11, CA. Cf *Re Hall, Public Trustee v Montgomery* [1944] Ch 46, [1943] 2 All ER 753.

6 Even in the absence of an express provision, a consent to an exercise of a power of advancement does not cause a forfeiture: *Re Hodgson, Weston v Hodgson* [1913] 1 Ch 34; *Re Shaw's Settlement Trusts, Shaw v Shaw* [1951] Ch 833, [1951] 1 All ER 656; *Re Rees, Lloyds Bank Ltd v Rees* [1954] Ch 202, [1954] 1 All ER 7. *Re Stimpson's Trusts, Stimpson v Stimpson* [1931] 2 Ch 77, where the contrary was held, can no longer be regarded as good law.

7 See the Trustee Act 1925 s 33(1)(i). The words 'or any part of it', if not inserted, will be implied: *Re Dennis's Settlement Trusts, Dennis v Dennis* [1942] Ch 283, [1942] 1 All ER 520; *Re Haynes Will Trusts, Pitt v Haynes* [1949] Ch 5, [1948] 2 All ER 423.

8 In a disposition made on or after 1 January 1970, the reference to the children or more remote issue of the principal beneficiary includes a reference to any illegitimate child of the principal beneficiary, and anyone who would rank as such issue if he, or some other person through whom he is descended from the principal beneficiary, had been born legitimate: see the Family Law Reform Act 1969 s 15(3)(a) (repealed); and WILLS vol 50 (2005 Reissue) PARA 643. In relation to dispositions inter vivos made on or after 4 April 1988 and dispositions by will or codicil where the will or codicil is made after that date the Trustee Act 1925 s 33 (as amended) has effect as if any reference, however expressed, to any relationship between two persons were construed in accordance with the Family Law Reform Act 1987 s 1: see s 19(3) (see WILLS vol 50 (2005 Reissue) PARA 644);

Trustee Act 1925 s 33(4) (added by the Family Law Reform Act 1987 s 33(1), Sch 2 para 2). See also CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 125.

9 In a disposition made on or after 1 January 1970, the reference to the issue of the principal beneficiary includes a reference to anyone who would rank as such issue if he, or some other person through whom he is descended from the principal beneficiary, had been born legitimate: see the Family Law Reform Act 1969 s 15(3)(b) (repealed); and WILLS vol 50 (2005 Reissue) PARA 643. In relation to dispositions inter vivos made on or after 4 April 1988 and dispositions by will or codicil where the will or codicil is made after that date see note 8 supra.

10 See the Trustee Act 1925 s 33(1)(ii).

UPDATE

917 Statutory protective trusts

TEXT AND NOTES 8, 9--References to wife or husband are now to spouse or civil partner: Trustee Act 1925 s 33(1)(ii) (amended by the Civil Partnership Act 2004 Sch 27 para 6).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(i) Life Interests/918. Events causing forfeiture.

918. Events causing forfeiture.

Whether or not an act or event has caused a forfeiture depends in every case upon the true construction of the particular clause, which will not be construed so as to extend its limits beyond the fair meaning of the words used¹. Where the clause adopts or follows the language of the statutory protective trusts², no forfeiture is caused by a settlement by the principal beneficiary of his protected life interest if, under the terms of the settlement, the income remains payable to him³, but a covenant to pay the income, if and when received, to a third person is an equitable assignment of the income and causes a forfeiture⁴. A forfeiture also occurs where the income is impounded by the trustees to make good a breach of trust⁵, or where a creditor obtains a charging order against the trust fund⁶, or where a writ of sequestration is issued against the property of the principal beneficiary⁷, or where under a statute the income becomes payable to the Custodian of Enemy Property⁸, but not where his interest is reduced after divorce by a court order⁹, nor where he elects against the instrument conferring the protected life interest¹⁰.

A forfeiture is not caused by the fact that fees, expenses or other sums are payable in priority out of the income, as where a receiver is appointed by an order of the Court of Protection¹¹, or where the trustees are entitled to their management expenses out of the income of the protected interest¹² or where a rentcharge is created to secure the repayment of capital money expended in payment for improvements under the Settled Land Act 1925¹³.

Further, no forfeiture is caused by the exercise by the court of an overriding power either to vary the trusts¹⁴ or to authorise a transaction affecting the trust property¹⁵.

1 *Re Greenwood, Sutcliffe v Gledhill* [1901] 1 Ch 887 at 891. In general, the court cannot supply words in such a clause: *Re Brewer's Settlement, Morton v Blackmore* [1896] 2 Ch 503; *Re Dennis's Settlement Trusts, Dennis v Dennis* [1942] Ch 283, [1942] 1 All ER 520. As to implying when a gift over takes effect see PARA 742 ante.

2 Ie the Trustee Act 1925 s 33 (as amended): see PARA 917 ante.

3 *Lockwood v Sikes* (1884) 51 LT 562; *Re Tancred's Settlement, Somerville v Tancred, Re Selby, Church v Tancred* [1903] 1 Ch 715. It is otherwise if the effect is to make the beneficiary's interest contingent: *Re Dennis's Settlement Trusts, Dennis v Dennis* [1942] Ch 283, [1942] 1 All ER 520. Receipt of income by trustees is not necessarily payment to a beneficiary: *Johnstone v Lumb* (1846) 15 Sim 308.

4 *Re Spearman, Spearman v Lowndes* (1900) 82 LT 302, CA; *Re Gillott's Settlement, Chattock v Reid* [1934] Ch 97; *Re Haynes Will Trusts, Pitt v Haynes* [1949] Ch 5, [1948] 2 All ER 423. An authority to the trustees to pay the income to a third person which is not communicated to the third person is, however, revocable and does not cause a forfeiture (*Re Hamilton, FitzGeorge v FitzGeorge* (1921) 124 LT 737, CA), nor does a like authority which is not acted on (*Re Salting, Baillie-Hamilton v Morgan* [1932] 2 Ch 57). See also CHUSES IN ACTION vol 13 (2009) PARA 32.

5 *Re Balfour's Settlement, Public Trustee v Official Receiver* [1938] Ch 928, [1938] 3 All ER 259.

6 *Roffey v Bend* (1867) LR 3 Eq 759. In *Re Richardson's Will Trusts, Public Trustee v Llewellyn Evans' Trustees* [1958] Ch 504, [1958] 1 All ER 538 it was held that forfeiture occurred where in divorce proceedings the principal beneficiary was ordered to charge his interest to secure maintenance, even if no deed was executed to give effect to the charge. However, this cannot be considered correct: see *General Accident Fire and Life Assurance Corp Ltd v IRC* [1963] 3 All ER 259, [1963] 1 WLR 1207, CA (see the text and note 9 infra). In *Edmonds v Edmonds* [1965] 1 All ER 379n, [1965] 1 WLR 58 it was held that an attachment of earnings order in respect of maintenance payments caused forfeiture of a pension held on protective trusts.

7 *Re Baring's Settlement Trusts, Baring Bros & Co Ltd v Liddell* [1940] Ch 737, [1940] 3 All ER 20. As to writs of sequestration see CIVIL PROCEDURE vol 12 (2009) PARA 1269.

8 *Re Gourju's Will Trusts, Starling v Custodian of Enemy Property* [1943] Ch 24, [1942] 2 All ER 605; cf *Re Munster* [1920] 1 Ch 268. See also *Re Hall, Public Trustee v Montgomery* [1944] Ch 46, [1943] 2 All ER 753; *Re Harris, Cope v Evans* [1945] Ch 316, [1945] 1 All ER 702; *Re Pozot's Settlement Trusts, Westminster Bank Ltd v Guerbois* [1952] Ch 427, [1952] 1 All ER 1107, CA, where on the construction of the particular clauses no forfeiture was incurred. As to the Custodian of Enemy Property see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 585.

9 *General Accident Fire and Life Assurance Corpn Ltd v IRC* [1963] 3 All ER 259, [1963] 1 WLR 1207, CA. Where the order extinguishes the interest of the beneficiary as if he were dead, the discretionary trusts grafted onto the determinable life interest are, however, extinguished with it: *Re Allsopp's Marriage Settlement Trusts, Public Trustee v Cherry* [1959] Ch 81, [1958] 2 All ER 393.

10 *Re Gordon's Will Trusts, National Westminster Bank Ltd v Gordon* [1978] Ch 145, [1978] 2 All ER 969, CA. As to election generally see EQUITY vol 16(2) (Reissue) PARA 724 et seq.

11 *Re Westby's Settlement, Westby v Ashley* [1950] Ch 296, [1950] 1 All ER 479, CA. As to receivers for patients see generally MENTAL HEALTH vol 30(2) (Reissue) PARA 704 et seq. Income payable to an agent of the beneficiary is not payable to another person within the meaning of a forfeiture clause: *Re Marshall, Marshall v Whateley* [1920] 1 Ch 284; *Re Oppenheim's Will Trusts, Westminster Bank Ltd v Oppenheim* [1950] Ch 633, [1950] 2 All ER 86.

12 *Re Tancred's Settlement, Somerville v Tancred, Re Selby, Church v Tancred* [1903] 1 Ch 715.

13 See *Re Liberty's Will Trusts, Blackmore v Stewart Liberty* [1937] Ch 176, [1937] 1 All ER 399; and PARA 813 ante.

14 See the Variation of Trusts Act 1958 s 1 (as amended); and PARA 674 ante.

15 *Re Mair, Richards v Doxat* [1935] Ch 562; cf *Re Salting, Baillie-Hamilton v Morgan* [1932] 2 Ch 57.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(i) Life Interests/919. Express protective trusts.

919. Express protective trusts.

The statutory protective trusts¹ may be varied both as regards the events which will cause a forfeiture and the objects of the discretionary trusts by the instrument creating the trust².

A clause conferring a protected life interest, even if future in terms, applies to a bankruptcy existing at the date of the settlement or at the time when the interest would, but for the bankruptcy, have fallen into possession³. If the forfeiture is expressed to take effect on alienation only, an involuntary act, such as the filing by a creditor of a bankruptcy petition, does not operate as a forfeiture⁴. The filing by a debtor of a petition which is not followed by adjudication does not work a forfeiture of his life interest under a limitation 'until he should do or suffer something whereby the income, if payable absolutely to him, would become vested in any other person'⁵. The word 'forfeited' in a gift over in case the settled property should be 'forfeited to or become vested in any other person' means liable to be taken away, not merely actually taken away⁶. A trust until insolvency means until the beneficiary is unable to pay his debts⁷.

Forfeiture is now restricted in the case of interests in occupational pension schemes⁸.

1 See the Trustee Act 1925 s 33 (as amended); and PARA 917 ante.

2 See *ibid* s 33(2).

3 See BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 397. The position is different if the bankruptcy is annulled in the interval between the time when the title to the fund accrues to the bankrupt and the time when it would have become payable to him but for the bankruptcy: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 397. A clause which is future in its terms will not be construed so as to include past charges where the settlement contains a recital that charges have been created: *West v Williams* [1899] 1 Ch 132, CA.

4 *Lear v Leggett* (1830) 1 Russ & M 690; *Pym v Lockyer* (1841) 12 Sim 394. The result may be different if the petition is presented by the beneficiary and is followed by an adjudication: *Re Cotgrave, Mynors v Cotgrave* [1903] 2 Ch 705. See, however, *Re Griffiths, Jones v Jenkins* [1926] Ch 1007; and BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 395. The fact that in such a clause the income is expressed to be given to the husband and his assigns during his life does not make the life interest absolute: *Re Kelly's Settlement, West v Turner* (1888) 59 LT 494. A charging order obtained by a creditor terminates an interest limited until the execution of some assignment or act by which the interest might be incumbered: *Montefiore v Behrens* (1865) LR 1 Eq 171. On the other hand, a gift over, if the beneficiary should be precluded from personal enjoyment by any legal disability, takes effect only on a personal disability being imposed involuntarily by the law, such as bankruptcy, not on a disability voluntarily created, such as an alienation or charge (*Re Carew, Carew v Carew* [1896] 2 Ch 311, CA), and a clause which provided for forfeiture only in case of acts or events which were done or happened without the beneficiary's consent was not brought into operation by an act of the legislature, to which no effective consent was possible (*Re Viscount Furness, Wilson v Kenmare* [1943] Ch 415, [1944] 1 All ER 66).

5 *Re Moon, ex p Dawes* (1886) 17 QBD 275, CA; *Re Griffiths, Jones v Jenkins* [1926] Ch 1007. Cf *Re Weibking, ex p Ward* [1902] 1 KB 713 (where the words 'become bankrupt' meant 'be adjudicated a bankrupt'); *Re Hamilton, FitzGeorge v FitzGeorge* (1921) 124 LT 737, CA (where neither a receiving order nor a scheme for composition worked a forfeiture). See, however, *Re Amherst's Trusts* (1872) LR 13 Eq 464.

6 *Re Levy's Trusts* (1885) 30 ChD 119. However, where land was settled until the tenant for life should commit, or knowingly permit or suffer to be committed, any act by which his interest in the land might become the property of a third person, or until the land should be taken in execution, the interest was held not to be forfeited by a judgment being obtained and a writ of fieri facias issued against the tenant for life: *Re Ryan* (1887) 19 LR Ir 24. As to writs of fieri facias see CIVIL PROCEDURE vol 12 (2009) PARAS 1266, 1273 et seq.

7 *De Tastet v Le Tavernier, De Tastet v Smith, Smith v De Tastet* (1836) 1 Keen 161; *Freeman v Bowen* (1865) 35 Beav 17; *Billson v Crofts* (1873) LR 15 Eq 314; *Nixon v Verry* (1885) 29 ChD 196. Cf *Montefiore v Enthoven* (1867) LR 5 Eq 35, where the limitation was until the beneficiary should become bankrupt or take the benefit of any Act for the relief of insolvent debtors.

8 See the Pensions Act 1995 ss 91-94; and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 865 et seq. See also, in relation to the effect of forfeiture provisions in occupational pension clauses, *In re Landau (a bankrupt)* [1998] Ch 223, [1997] 3 All ER 322.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(i) Life Interests/920. Life interests by implication.

920. Life interests by implication.

A settlement on a husband and wife during their joint and natural lives means during their joint lives and the natural life of each of them¹. Where there was a trust of income for the separate use of the wife during marriage, with a gift over in the event of her dying in her husband's lifetime, the wife took a life interest by implication².

In some cases, on the construction of the particular instrument, trusts for the benefit of a parent and children have conferred only a life interest on the parent³.

Where there is a determinable life interest and the ultimate gift is expressed to take effect only on the death of the life tenant, it may be possible to fill the gap in the trusts by necessary implication⁴, but this cannot be done if it is impossible to see what trust must be implied⁵. Cross-remainders for life between children have been implied where the intention apparent from the deed was that the property should be kept together as a whole until the death of the survivor of the children and that the income should go among the children who survived⁶.

1 *Smith v Oakes* (1844) 14 Sim 122.

2 *Tunstall v Trappes* (1830) 3 Sim 286 at 308, 312; *Allin v Crawshay* (1851) 9 Hare 382; *Sweetman v Butler* [1908] 1 IR 517. Cf *Re Stanley's Settlement, Maddocks v Andrews* [1916] 2 Ch 50. For cases where the wife has been held, on the construction of the settlement, to take a greater interest see *Clarke v Hackwell* (1788) 2 Bro CC 304; *Smith v King* (1826) 1 Russ 363.

3 *Chambers v Atkins* (1823) 1 Sim & St 382; *Fowler v Hunter* (1829) 3 Y & J 506.

4 *Re Akeroyd's Settlement, Roberts v Akeroyd* [1893] 3 Ch 363, CA.

5 *Re Cochrane, Shaw v Cochrane* [1955] Ch 309, [1955] 1 All ER 222. As to supplying words generally see *Re Whitrick, Sutcliffe v Sutcliffe* [1957] 2 All ER 467, [1957] 1 WLR 884, CA.

6 *Re Hey's Settlement Trusts, Hey v Nickell-Lean* [1945] Ch 294, [1945] 1 All ER 618 (implication of trust of share and income of child dying before period of distribution in favour of surviving children), applying *Re Tate, Williamson v Gilpin* [1914] 2 Ch 182 at 185. See further WILLS vol 50 (2005 Reissue) PARA 752 et seq. As to the use and effect of an accrue clause in trusts for issue see PARA 928 note 4 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(i) Life Interests/921. Acceleration of subsequent interests.

921. Acceleration of subsequent interests.

The doctrine of acceleration usually arises in relation to gifts by will¹, but it may also apply to settlements². Where there is a gift to a person for life, and a vested gift in remainder expressed to take effect on the death of the first taker, the gift in remainder is construed as a gift taking effect on the death of the first taker or on any earlier failure or determination of his interest; the result is that if the gift to the first taker fails in his lifetime or is disclaimed or surrendered then the person entitled in remainder will take immediately on the failure or determination of the prior interest, and will not be kept waiting until the death of the first taker³. The principle applies to personalty as well as to realty⁴. It applies if the remainder is vested, but subject to defeasance⁵, but not if it is contingent⁶, unless the contingency is not related to the determination of the prior interest or to the words of futurity⁷.

1 See eg *Jull v Jacobs* (1876) 3 ChD 703. See also WILLS vol 50 (2005 Reissue) PARA 472.

2 See *Re Flower's Settlement Trusts, Flower v IRC* [1957] 1 All ER 462 at 465, [1957] 1 WLR 401 at 405, CA, per Jenkins LJ; *Re Young's Settlement Trusts, Royal Exchange Assurance v Taylor-Young* [1959] 2 All ER 74 at 78, [1959] 1 WLR 457 at 462 per Harman J; *Re Dawson's Settlement, Lloyds Bank Ltd v Dawson* [1966] 3 All ER 68, [1966] 1 WLR 1456. However, it may be more difficult in the case of a settlement to collect the necessary intention: see *Re Flower's Settlement Trusts, Flower v IRC* supra at 465 and 405 per Jenkins LJ; *Re Young's Settlement Trusts, Royal Exchange Assurance v Taylor-Young* supra.

3 *Re Flower's Settlement Trusts, Flower v IRC* [1957] 1 All ER 462 at 465, [1957] 1 WLR 401 at 405, CA, per Jenkins LJ. Cf para 936 post.

4 *Re Flower's Settlement Trusts, Flower v IRC* [1957] 1 All ER 462 at 465, [1957] 1 WLR 401 at 405, CA, per Jenkins LJ; *Re Hodge, Midland Bank Executor and Trustee Co Ltd v Morrison* [1943] Ch 300 at 301, [1943] 2 All ER 304 at 305 per Simonds J.

5 *Re Conyngham, Conyngham v Conyngham* [1921] 1 Ch 491, CA; *Re Taylor, Lloyds Bank Ltd v Jones* [1957] 3 All ER 56, [1957] 1 WLR 1043. As to conditions of defeasance generally see PARA 740 et seq ante.

6 *Re Townsend's Estate, Townsend v Townsend* (1886) 34 ChD 357.

7 *Re Bellville's Settlement Trusts, Westminster Bank Ltd v Bellville* [1964] Ch 163, [1963] 3 All ER 270; *Re Dawson's Settlement, Lloyds Bank Ltd v Dawson* [1966] 3 All ER 68, [1966] 1 WLR 1456. See also *Re Harker's Will Trusts, Kean v Harker* [1969] 3 All ER 1, [1969] 1 WLR 1124; cf *Re Kebby-Fletcher's Will Trusts, Public Trustee v Swan and Snowden* [1969] 1 Ch 339, [1967] 3 All ER 1076. As to contingent interests see further WILLS vol 50 (2005 Reissue) PARA 473.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(ii) Trusts for Issue/922. Nature of powers of appointment among issue.

(ii) Trusts for Issue

922. Nature of powers of appointment among issue.

As a rule, in marriage settlements of personalty the settled fund is held by the trustees after the death of the survivor of the husband and wife upon trust for the children or more remote issue of the marriage in such shares and for such interests as the husband and wife by deed, revocable or irrevocable, jointly appoint¹, and in default of such appointment as the survivor by deed, revocable or irrevocable, or by will or codicil, appoints².

The extension of this power to the more remote issue of the marriage was rendered necessary by the inconvenience of a limitation to children of the marriage only, which prevented parents from providing for their grandchildren³, so that the issue of a child predeceasing the parent might be left unprovided for, it being impossible to appoint either to the issue or to the personal representatives of the deceased child⁴. The donee of the power must be careful in exercising it to select only such objects of the power as are within the limits prescribed by the rule against perpetuities⁵.

If the appointment under such a power is made by will and the appointee dies in the lifetime of the donee of the power, the appointment fails and the share goes as unappointed among the persons entitled in default of appointment⁶.

1 For the purposes of the rule against perpetuities a joint power has been held not to be a general power: *Re Churston's Settled Estates*[1954] Ch 334, [1954] 1 All ER 725. See also PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1091; POWERS. As to illegitimate, legitimated and adopted children see PARAS 731-733 ante.

2 As to powers of appointment among a class, powers of revocation and the invalid exercise of powers see POWERS.

3 See *Alexander v Alexander* (1755) 2 Ves Sen 640; *Smith v Lord Camelford* (1795) 2 Ves 698; *Kennerley v Kennerley* (1852) 10 Hare 160.

4 See *Maddison v Andrew* (1747) 1 Ves Sen 57; *Re Susanni's Trusts* (1877) 47 LJ Ch 65.

5 As to who are lawful appointees see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1090 et seq.

6 *Griffiths v Gale* (1844) 12 Sim 354; *Holyland v Lewin*(1884) 26 ChD 266, CA. See also WILLS vol 50 (2005 Reissue) PARA 460.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(ii) Trusts for Issue/923. Form of power of appointment.

923. Form of power of appointment.

A power of appointment among issue is usually expressed to be to appoint to one or more exclusively of the others or other of the children or issue, although every power is now *prima facie* exclusive¹.

A trust for children at such ages as the donee of the power may appoint authorises an appointment to a child *en ventre sa mere* at the date of the appointment², and such a child can take by virtue of an appointment made under a power to appoint to issue born before the date of appointment³.

The donee is generally authorised to make provision for the maintenance, education and advancement of the objects of the power⁴. The statutory powers as to maintenance, and, in the case of trusts created after 1925, as to advancement, are available, in relation to interests taken by minors under a power of appointment⁵.

A special power of appointment by will given to the survivor of a husband and wife is not well exercised by an appointment made during the joint lives by the will of the actual survivor⁶.

1 See the Law of Property Act 1925 s 158(1); and POWERS. As to illegitimate, legitimated and adopted children see PARAS 731-733 ante.

2 *Fearon v Desbrisay* (1851) 14 Beav 635.

3 *Re Farncombe's Trusts* (1878) 9 ChD 652.

4 As to settlements made in exercise of special powers of appointment see also PARA 626 ante.

5 See CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 58 et seq; TRUSTS vol 48 (2007 Reissue) PARAS 1049-1050.

6 See *Re Moir's Settlement Trusts* (1882) 46 LT 723; and POWERS. As to the exercise of powers generally see POWERS. A general power exercisable by the survivor is, however, well exercised by them jointly: *Macarmick v Buller* (1787) 1 Cox Eq Cas 357.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(ii) Trusts for Issue/924. Hotchpot clauses.

924. Hotchpot clauses.

A clause, called a 'hotchpot clause'¹, is often inserted in order to preclude appointees² of a share of the fund from participating in the unappointed fund without treating the appointed shares as received in or towards satisfaction of the shares to which they would be entitled if the whole fund were to go in default of appointment³.

The clause applies to appointments of life or reversionary interests⁴. A life interest must be brought into hotchpot on the basis of an actuarial calculation of its value on the date when it fell into possession, irrespective of subsequent events⁵.

The ordinary hotchpot clause in settlements does not apply to advancements⁶.

1 As to hotchpot clauses in wills see WILLS vol 50 (2005 Reissue) PARAS 688-690.

2 If the power of appointment extends to issue more remote than children, the hotchpot clause should be made expressly to apply to such issue: *Langslow v Langslow* (1856) 21 Beav 552; *Hewitt v Jardine* (1872) LR 14 Eq 58.

3 In the absence of a hotchpot clause the appointee of a share in a fund is entitled to share in the unappointed residue: *Wilson v Piggott* (1794) 2 Ves 351; *Alloway v Alloway* (1843) 4 Dr & War 380; *Wombwell v Hanrott* (1851) 14 Beav 143; *Foster v Cautley* (1855) 6 De GM & G 55; *Walmsley v Vaughan* (1857) 1 De G & J 114; *Close v Coote* (1880) 7 LR Ir 564; *Re Alfretons Trust Estates* (1883) 52 LJ Ch 745. However, the rule may be excluded by clear expression of intention on the part of the appointor (*Fortescue v Gregor* (1800) 5 Ves 553; *Foster v Cautley* supra), or by the appointee agreeing to take under the appointment in lieu of his share in the unappointed property (*Clune v Apjohn* (1865) 17 I Ch R 25; *Armstrong v Lynn* (1875) IR 9 Eq 186). As to the time for valuing appointed shares cf *Re Gollin's Declaration of Trust*, *Turner v Williams* [1969] 3 All ER 1591, [1969] 1 WLR 1858; *Re Marquess of Abergavenny's Estate Act Trusts*, *Marquess of Abergavenny v Ram* [1981] 2 All ER 643, [1981] 1 WLR 843 (concerning the valuation of advanced property).

4 *Rucker v Scholefield* (1862) 1 Hem & M 36; *Eales v Drake* (1875) 1 ChD 217; *Wheeler v Humphreys* [1898] AC 506, HL. See, however, *Williamson v Jeffreys* (1854) 18 Jur 1071. Where the interest appointed is a life interest with a general power of appointment by will in default of issue, only the life interest need be brought into hotchpot: *Re Gordon, Public Trustee v Bland* [1942] Ch 131, [1942] 1 All ER 59.

5 *Re Heathcote, Trench v Heathcote* [1891] WN 10; *Re Westropp* (1903) 37 ILT 183; *Re Thomson Settlement Trusts, Robertson v Makepeace* [1953] Ch 414, [1953] 1 All ER 1139. See also *Re North Settled Estates, Public Trustee v Graham* [1946] Ch 13; and cf *Re West, Denton v West* [1921] 1 Ch 533, where the life interests never fell into possession and a retrospective actuarial calculation was rejected.

6 *Re Fox, Wodehouse v Fox* [1904] 1 Ch 480. As to advancement see PARA 667 ante; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 73 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(ii) Trusts for Issue/925. Application of hotchpot clause where two settled funds.

925. Application of hotchpot clause where two settled funds.

If two distinct funds are settled for the same purposes by two distinct deeds, each containing a hotchpot clause, each hotchpot clause applies only to the fund settled by the deed containing it¹. Where a settlement declared express trusts of one fund, with a hotchpot clause referring to that fund, the hotchpot clause was not incorporated with reference to a second and distinct fund by a general reference to the trusts, powers, provisos and agreements expressed in reference to the former fund². However, where it appeared on the true construction of the settlement that the second fund was to be amalgamated with or treated as an accretion to the first fund, the hotchpot clause was applicable to both funds³, and in the absence of express words a settlement may contain a plain indication of intention that the hotchpot clause is to apply to all funds settled by it⁴.

1 *Montague v Montague* (1852) 15 Beav 565; *Lady Wellesley v Earl of Mornington* (1855) 1 Jur NS 1202. See also PARA 722 ante. As to hotchpot clauses see PARA 924 ante.

2 *Re Marquis of Bristol, Earl Grey v Grey* [1897] 1 Ch 946; *Re Cavendish, Grosvenor v Butler* [1912] 1 Ch 794; *Re Wood, Wodehouse v Wood* [1913] 2 Ch 574, CA. Cf *Re Campbell's Trusts, Public Trustee v Campbell* [1922] 1 Ch 551; *Re Rydon's Settlement, Barclays Bank Ltd v Everitt* [1955] Ch 1, [1954] 3 All ER 1, CA.

3 *Re Fraser, Ind v Fraser* [1913] 2 Ch 224.

4 *Hutchinson v Tottenham* [1898] 1 IR 403; *Re Perkins, Perkins v Bagot* (1892) as reported in 67 LT 743; cf *Stares v Penton* (1867) LR 4 Eq 40; *Middleton v Windross* (1873) LR 16 Eq 212.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(ii) Trusts for Issue/926. Trusts in default of appointment.

926. Trusts in default of appointment.

In default of and subject to any appointment, in settlements made on marriage, the settled property is traditionally directed to go to all the children or any child of the marriage¹ who, being sons or a son, attain the age of 21 years², or, being daughters or a daughter, attain that age or marry under that age, and if more than one in equal shares³. A rule of convenience has been established in the case of wills⁴ that, where there is an immediate gift to a class to be paid on their attaining a specified age, the time for distribution is the death of the testator, if any member of the class has then attained that age and, if not, the first occasion when a member attains that age, and so that persons born after the time for distribution are excluded; this rule applies also to settlements, at any rate if made by voluntary deed⁵, but by reason of the previous life estate in the parent it is not normally called into play in relation to a marriage settlement⁶.

1 An ultimate trust for children of the intended husband includes children by a subsequent marriage, notwithstanding a limitation to him in default of children of the then intended marriage (*Isaac v Hughes* (1870) LR 9 Eq 191); and a trust in a post-nuptial settlement for children to be born of the marriage includes children in existence at the date of the settlement (*Slingsby v-* (1718) 10 Mod Rep 397; *Hewet v Ireland* (1718) 1 P Wms 426; and see *Cook v Cook* (1706) 2 Vern 545). As to illegitimate, legitimated and adopted children see PARAS 731-733 ante.

2 As to the age of majority see PARA 605 note 1 ante. A trust in a marriage settlement executed before 1926 in favour of children at any later age than 21 is void for remoteness, but on a settlement executed after 1925, if a trust is made to take effect at an age exceeding 21 and the settlement would as a result be rendered void for remoteness, the settlement takes effect with the substitution of a lower age (see the Law of Property Act 1925 s 163 (repealed in relation to instruments taking effect on or after 16 July 1964; Perpetuities and Accumulations Act 1964 s 4(1), applying in relation to instruments taking effect on or after that date): see PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1070.

3 Where there was a trust for such a class of persons 'as being male shall have attained the age of 21 years or being female shall have married under that age' the trust was, on the construction of the settlement as a whole, given effect to as if it read 'or being female shall have attained the age of 21 years or shall have married under that age': *Re Hargraves' Trusts, Leach v Leach* [1937] 2 All ER 545. A reference to marriage without more means marriage during infancy: *Lang v Pugh* (1842) 1 Y & C Ch Cas 718.

4 See eg *Andrews v Partington* (1791) 3 Bro CC 401; *Re Edmondson's Will Trusts, Baron Sandford of Banbury v Edmondson* [1972] 1 All ER 444, [1972] 1 WLR 183, CA. See also WILLS vol 50 (2005 Reissue) PARA 598 et seq.

5 *Re Knapp's Settlement, Knapp v Vassall* [1895] 1 Ch 91. It seems that it also applies to settlements for value: see *Re Knapp's Settlement, Knapp v Vassall* supra at 99. See also *Re Wernher's Settlement Trusts, Lloyds Bank Ltd v Earl Mountbatten* [1961] 1 All ER 184, [1961] 1 WLR 136; *Re Chapman's Settlement Trusts, Jones v Chapman* [1978] 1 All ER 1122, [1977] 1 WLR 1163, CA.

6 As to marriage settlements see PARA 628 et seq ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(ii) Trusts for Issue/927. Marriage with consent.

927. Marriage with consent.

The provision for daughters is sometimes made dependent on their marrying with the consent of their parents, or of the trustees of the settlement¹. In such a case, if the consent required is that of a class of persons who, without the beneficiary's fault or default, have ceased to exist and cannot be brought into existence, as in the case of the consent of the parents being required and one or both being dead at the time of the marriage, the consent may be dispensed with². However, the consent is not dispensed with on the ground that the class of persons whose consent is required is not actually in existence at the time of marriage, if such a class could have been brought into existence, as where the consent required is that of trustees or guardians³.

A direction that the shares of daughters are to be settled is inserted only to provide for the daughters' children, if any, so that if a daughter never has any children the object in cutting down her interest is gone, and she takes absolutely⁴.

1 Such a condition is enforceable if it is accompanied by a gift over on marriage without the required consent: *Re Whiting's Settlement*, *Whiting v De Rutzen* [1905] 1 Ch 96, CA. See also GIFTS vol 52 (2009) PARA 255; WILLS vol 50 (2005 Reissue) PARA 422 et seq.

2 *Green v Green* (1845) 2 Jo & Lat 529; *Dawson v Oliver-Massey* (1876) 2 ChD 753, CA.

3 *Re Brown's Will*, *Re Brown's Settlement* (1881) 18 ChD 61, CA. As to gifts of legacies conditional on marriage with consent see further WILLS vol 50 (2005 Reissue) PARAS 426-427.

4 *Re Sidway Hall Estate* (1877) 37 LT 457. See also WILLS vol 50 (2005 Reissue) PARA 618.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(ii) Trusts for Issue/928. Time of vesting.

928. Time of vesting.

As in the case of portions¹, so in the case of provision for issue, the rule is that if the settlement clearly and unequivocally throughout all its provisions makes the right of a child depend upon its surviving both its parents, the court has no authority to control that disposition². However, if the settlement is in any of its provisions ambiguously expressed, so as to leave it in any degree uncertain whether it was intended that the right of a child should depend upon the event of its surviving both its parents, then the court is bound by authority to declare, upon what may be called the presumed intention in instruments of this nature, that the interest of a child, although not to take effect in possession until after the death of both parents, did, upon the limitations in the settlement, vest in the case of sons at 21 and of daughters at 21 or on marriage³.

If limitations or trusts giving a vested interest at birth are employed, they are generally accompanied by an accrue clause, so that on the death of a child under 21 or if a daughter, without having been married, his or her share devolves on the other children or child⁴.

1 As to the vesting of portions see PARA 738 ante.

2 *Bright v Rowe* (1834) 3 My & K 316; *Jeffery v Jeffery* (1849) 17 Sim 26; *Lloyd v Cocker* (1854) 19 Beav 140; *Barnett v Blake* (1862) 2 Drew & Sm 117; *Beale v Connolly* (1874) IR 8 Eq 412. Cf *Re Edgington's Trusts* (1855) 3 Drew 202, where a gift over to children 'then living' was held to refer to the period at which the prior life interest determined.

3 *Perfect v Lord Curzon* (1820) 5 Madd 442; *Torres v Franco* (1830) 1 Russ & M 649; *Re Orlebar's Settlement Trusts* (1875) LR 20 Eq 711; *Martin v Dale* (1884) 15 LR Ir 345. Cf *Bree v Perfect* (1844) 1 Coll 128. The court's policy is to accelerate, if possible, the period of vesting unless there is something in the document to show an intention to postpone enjoyment until the happening of some event personal to the parties interested themselves: *Darley v Perceval* [1900] 1 IR 129. See also PARA 926 ante; and WILLS vol 50 (2005 Reissue) PARA 697.

4 Cross-remainders may sometimes be implied as a matter of construction: *Re Bickerton's Settlement, Shaw v Bickerton* [1942] Ch 84, [1942] 1 All ER 217; *Adamson v A-G* [1933] AC 257 at 279, HL. As to the implication of cross-remainders in wills see WILLS vol 50 (2005 Reissue) PARA 761. As to the implication of cross-remainders for life between children see PARA 920 ante. In construing an accrue clause there is no distinction between a deed and a will: see *Re Friend's Settlement, Cole v Allcot* [1906] 1 Ch 47; *Cole v Sewell* (1848) 2 HL Cas 186 at 236. The court construes 'survivors' as 'others' if there is a sufficient context to enable this to be done (*Re Palmer's Settlement Trusts* (1875) LR 19 Eq 320; *Re Friend's Settlement, Cole v Allcot* supra), but otherwise the words must bear their grammatical meaning (*Cole v Sewell* supra). See also *Re Allsop, Cardinal v Warr* [1968] Ch 39, [1967] 2 All ER 1056, CA; and WILLS vol 50 (2005 Reissue) PARA 606 et seq. Survivorship has also been referred to the period of vesting (*Re Acott's Settlement* (1859) 28 LJ Ch 383), and of distribution (*Reid v Reid* (1862) 30 Beav 388). As to conditions of defeasance generally see PARA 740 et seq ante.

UPDATE

928 Time of vesting

NOTE 3--See also *Barclays Bank Trust Co Ltd v McDougall* (2000) Times, 3 August (settlement apparently creating vested interest requires clear words to convert gift into a contingent one).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(ii) Trusts for Issue/929. Meaning of 'issue'.

929. Meaning of 'issue'.

Where trusts are declared in favour of issue the question frequently arises whether 'issue' is confined to children, or whether and to what extent it includes grandchildren. The word 'issue' occurring in a deed or in a will¹ prima facie includes descendants in all degrees, unless there is some context to displace that construction². However, if issue are pointed out as persons to take with reference to the share of the parent a gift which, so far as regards the parent, fails, they take on the principle which may be called the quasi-representative principle; that is to say, the children of each parent whose share fails take that parent's share, but grandchildren are not admitted to take in competition with children³. There may also be such a context in a deed as to cause 'issue' to be construed as children⁴.

A substitutional gift in favour of the issue of a named parent, in the event of that parent dying in the settlor's lifetime, does not fail by reason of the parent being dead at the date of the settlement⁵.

A gift in favour of male issue prima facie includes only issue in the exclusively male line⁶, but a gift to male descendants is not so confined⁷.

1 With regard to wills the court always looks at the intention of the testator, and adopts in practice, if not in theory, a more benignant rule of construction than in the case of an executed settlement, which it always takes as it finds it: *Re Warren's Trusts* (1884) 26 ChD 208 at 217. For cases under wills where 'issue' has been restricted to children see *Re Hopkins' Trusts* (1878) 9 ChD 131; *Ralph v Carrick* (1879) 11 ChD 873 at 882, CA. As to whether a reference to issue taking their deceased parent's share raises a presumption that only children can take see *Re Manly's Will Trusts, Burton v Williams* [1969] 3 All ER 1011, [1969] 1 WLR 1818; *Re Manly's Will Trusts (No 2), Tickle v Manly* [1976] 1 All ER 673. See also WILLS vol 50 (2005 Reissue) PARA 624 et seq. 'Issue' has also been restricted to children in marriage articles, which are treated only as a memorandum of instruction: *Swift v Swift* (1836) 8 Sim 168; *Thompson v Simpson* (1841) 1 Dr & War 459; *Campbell v Sandys* (1803) 1 Sch & Lef 281.

2 *South v Searle* (1856) 2 Jur NS 390; *Harrison v Symons* (1866) 14 WR 959; *Donoghue v Brooke* (1875) IR 9 Eq 489; *Re Warren's Trusts* (1884) 26 ChD 208; *Hobbs v Tuthill* [1895] 1 IR 115 (commenting on *Re Dixon's Trusts* (1869) IR 4 Eq 1, and *Re Denis' Trusts* (1875) IR 10 Eq 81). Cf *Haydon v Wilshire* (1789) 3 Term Rep 372.

3 *Robinson v Sykes* (1856) 23 Beav 40 (following *Ross v Ross* (1855) 20 Beav 645 (will)); *Anderson v Viscount St Vincent* (1856) 2 Jur NS 607; *Marshall v Baker* (1862) 31 Beav 608; *Barraclough v Shillito* (1884) 53 LJ Ch 841; *Re Manly's Will Trusts, Burton v Williams* [1969] 3 All ER 1011, [1969] 1 WLR 1818; *Re Manly's Will Trusts (No 2), Tickle v Manly* [1976] 1 All ER 673.

4 As where a gift to issue was followed by a gift to one child if there should be but one (*Re Biron's Contract* (1878) 1 LR Ir 258, Ir CA), or where a power of appointment given in the event of death without leaving lawful issue was followed by a gift over in default of appointment, in case there should be no children (*Re Heath's Settlement* (1856) 23 Beav 193; *Gordon v Hope* (1849) 3 De G & Sm 351). 'Issue of our marriage' includes only children: *Reed v Braithwaite* (1871) LR 11 Eq 514; *Re Noad, Noad v Noad* [1951] Ch 553, [1951] 1 All ER 467, not following *Walsh v Johnston* [1899] 1 IR 501. See also WILLS vol 50 (2005 Reissue) PARA 624. As to illegitimate, legitimated and adopted children see PARAS 731-733 ante.

5 *Barnes v Jennings* (1866) LR 2 Eq 448. See also WILLS vol 50 (2005 Reissue) PARA 538.

6 *Re Du Cros' Settlement, Du Cros Family Trustee Co Ltd v Du Cros* [1961] 3 All ER 193, [1961] 1 WLR 1252.

7 *Re Du Cros' Settlement, Du Cros Family Trustee Co Ltd v Du Cros* [1961] 3 All ER 193, [1961] 1 WLR 1252; *Re Drake, Drake v Drake* [1971] Ch 179, [1970] 3 All ER 32, CA.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(ii) Trusts for Issue/930. Effect of no trust in default of appointment.

930. Effect of no trust in default of appointment.

If a settlement contains a power to appoint among certain objects but no gift to those objects and no gift over in default of appointment, or a gift to a class and a power to appoint in what shares and what manner the members may take, the court may imply a trust for, or a gift to, those objects equally if the power is not exercised¹.

1 See *Cruwys v Colman* (1804) 9 Ves 319; *Parsons v Baker* (1812) 18 Ves 476; *Re Llewellyn's Settlement, Official Solicitor v Evans* [1921] 2 Ch 281. See also POWERS.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(ii) Trusts for Issue/931. Provision for issue of subsequent marriage.

931. Provision for issue of subsequent marriage.

Provision for issue of a subsequent marriage is usually made by the insertion of a power to appoint in favour of a subsequent spouse and the children of the subsequent marriage a portion of the trust fund, the amount being commonly made to depend on the number of children of the first marriage who become adult¹. Such a power is sometimes made conditional on the making of a settlement on a subsequent marriage².

1 As to the age of majority see PARA 605 note 1 ante. As to gifts to children see also WILLS vol 50 (2005 Reissue) PARA 621.

2 As to marriage settlements see PARA 628 et seq ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(iii) Trusts in default of Issue/932. Usual trusts in default of issue.

(iii) Trusts in default of Issue

932. Usual trusts in default of issue.

As a rule the aim of the trusts in default of issue contained in a marriage settlement is to return the settled property to the destination to which it would have gone if no settlement had been made¹.

The ordinary ultimate limitation of personal property settled by the husband is for the husband absolutely in default of issue².

The wife's fund may be settled if the wife survives the husband, in trust for the wife absolutely³, but, if he survives her, on such trusts as she by will or codicil appoints and, in default of and subject to any such appointment, in trust for the person or persons who would have been entitled to it if she had died domiciled in England a widow and intestate and in the same shares and proportions⁴.

1 Trusts in default of issue may arise on the dissolution of a marriage, there being no issue of the marriage: *Bond v Taylor* (1861) 2 John & H 473. A gift over on the death of issue under age was held to take effect on there being no issue of the marriage: *Osborn v Bellman* (1860) 2 Giff 593.

2 If and so long as the settled property or its income cannot become payable to the settlor except on the death under the age of 25 or some lower age of some person who would be beneficially entitled to the property or its income on attaining that age, an ultimate trust for the settlor will not be an interest retained by him within the Income and Corporation Taxes Act 1988 s 660A (as added): see PARA 619 ante; and INCOME TAXATION vol 23(2) (Reissue) PARA 1553.

3 A trust for such children of a future marriage as the wife, if she survives her husband, by will appoints does not interfere with her right to the trust funds under an absolute trust for her if she survives her husband and there is no issue of the intended marriage: *Hanson v Cooke and Hanson* (1825) 4 LJOS Ch 45. Failure to give an absolute interest to a married woman in the event of her surviving her husband, so that the next of kin acquire an indefeasible interest, has been held to be a ground for rectification upon the unsupported testimony of the wife that her intention was only to protect the settled property during marriage: *Wolterbeek v Barrow* (1857) 23 Beav 423; *Smith v Iliffe* (1875) LR 20 Eq 666; *Cook v Fearn* (1878) 48 LJ Ch 63; *Edwards v Bingham* (1879) 28 WR 89; *Hanley v Pearson* (1879) 13 ChD 545.

4 In accordance with the Administration of Estates Act 1925 Pt IV (ss 45-52) (as amended); and the Family Law Reform Act 1987 ss 1, 18(1): see EXECUTORS AND ADMINISTRATORS. As to the construction of references in settlements, whenever made, to the Statutes of Distribution or to statutory next of kin see PARAS 934-935 post; and EXECUTORS AND ADMINISTRATORS.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(iii) Trusts in default of Issue/933. Trusts for personal representatives.

933. Trusts for personal representatives.

A trust for executors and administrators gives them the property in their representative capacity, notwithstanding the addition of the words 'for their own use and benefit'¹. Trusts for the representatives, or personal representatives, or legal personal representatives of a person have the same meaning and effect as trusts for the executors and administrators², unless sufficiently strong grounds can be found in the particular instrument to justify a different construction, as for example treating them as equivalent to 'next of kin'³.

When such a trust follows a life interest to the person whose representatives are to take, that person takes an absolute interest⁴, notwithstanding the interposition between the life interest and the ultimate trust of a power of appointment by deed or will⁵ or by will only⁶. In this respect a trust for personal representatives differs from a trust for next of kin, since a limitation to a person for life, and then as he should appoint by will, and in default of appointment for his next of kin, takes effect according to its tenor⁷.

1 *Collier v Squire* (1827) 3 Russ 467; *Wellman v Bowring* (1830) 3 Sim 328; *Marshall v Collett* (1835) 1 Y & C Ex 232; *Hames v Hames* (1838) 2 Keen 646; *Meryon v Collett* (1845) 8 Beav 386; *Johnson v Routh* (1857) 27 LJ Ch 305; *O'Brien v Hearn* (1870) 18 WR 514.

2 *Re Crawford's Trusts* (1854) 2 Drew 230; *Re Best's Settlement Trusts* (1874) LR 18 Eq 686. See also *Topping v Howard* (1851) 4 De G & Sm 268.

3 *Smith v Dudley* (1738) 9 Sim 125 ('executors or administrators of her own family'); *Bailey v Wright* (1811) 18 Ves 49 ('next of kin or personal representative') (affd (1818) 1 Swan 39); *Bulmer v Jay* (1830) 4 Sim 48 (affd (1834) 3 My & K 197); *Daniel v Dudley* (1841) 1 Ph 1; *A-G v Malkin* (1846) 2 Ph 64; *Briggs v Upton* (1872) 7 Ch App 376 ('legal representatives in due course of administration'); *Robinson v Evans* (1873) 43 LJ Ch 82 ('person or persons who should happen to be legal personal representatives at time of death'); and see *Howell v Gayler* (1842) 5 Beav 157; *Morris v Howes* (1845) 4 Hare 599; on appeal (1846) 16 LJ Ch 121; *Walker v Marquis of Camden* (1848) 16 Sim 329; *Mackenzie v Mackenzie* (1851) 3 Mac & G 559; *Lindsay v Ellicott* (1876) 46 LJ Ch 878.

4 *Anderson v Dawson* (1808) 15 Ves 532; *Page v Soper* (1853) 11 Hare 321. Cf *Malcolm v O'Callaghan* (1835) 5 LJ Ch 137. A trust for the executors and administrators of a living person does not, however, entitle that person to demand the fund: *Horseman v Abbey* (1819) 1 Jac & W 381.

5 *Holloway v Clarkson* (1843) 2 Hare 521.

6 *Devall v Dickens* (1845) 9 Jur 550; *St John v Gibson* (1847) 12 Jur 373; *Page v Soper* (1853) 11 Hare 321.

7 *Anderson v Dawson* (1808) 15 Ves 532. See also *Wolterbeek v Barrow* (1857) 23 Beav 423; *Paul v Paul* (1882) 20 ChD 742, CA. As to trusts for next of kin see PARAS 934-935 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(iii) Trusts in default of Issue/934. Trusts for heirs or next of kin.

934. Trusts for heirs or next of kin.

A trust of personalty for the heirs of a person, contained in a settlement which came into operation before 1 January 1926, was not affected by the Administration of Estates Act 1925¹. Under such a trust contained in a settlement whenever made, the heir-at-law (who will be ascertained according to the law in force prior to that date) takes and not the next of kin², although a substitutional gift to persons or their heirs may be treated as referring to the next of kin³.

A trust for the next of kin of a person, without more, is not a trust for the next of kin according to the statute which would have regulated the distribution of his property if he had died intestate⁴, but a trust for his nearest blood relations, so that brothers and sisters take to the exclusion of the children of deceased brothers and sisters⁵; and, in the absence of some indication to the contrary, such persons will take as joint tenants⁶. A husband is not next of kin to his wife⁷, nor is a wife next of kin to her husband⁸. Prima facie, the next of kin of a person are to be ascertained at his death⁹.

1 See the Administration of Estates Act 1925 s 51(1); and EXECUTORS AND ADMINISTRATORS.

2 See the Law of Property Act 1925 ss 131 (as amended), 132 (see WILLS vol 50 (2005 Reissue) PARA 630; EXECUTORS AND ADMINISTRATORS); *Hamilton v Mills* (1861) 29 Beav 193; *Re Bourke's Will Trusts, Barclays Bank Trust Co Ltd v Canada Permanent Trust Co* [1980] 1 All ER 219, [1980] 1 WLR 539. The husband cannot take under a limitation of personalty to the right heirs of the wife: *Newenham v Pittar* (1838) 7 LJ Ch 300. As to who was the heir-at-law under the law in force prior to 1926 see EXECUTORS AND ADMINISTRATORS.

3 *Re Whitehead, Whitehead v Hemsley* [1920] 1 Ch 298; *Re Kilvert, Midland Bank Executor and Trustee Co Ltd v Kilvert* [1957] Ch 388, [1957] 2 All ER 196. See, however, *Re Bourke's Will Trusts, Barclays Bank Trust Co Ltd v Canada Permanent Trust Co* [1980] 1 All ER 219, [1980] 1 WLR 539.

4 In the case of deaths before 1926, the Statute of Distribution (1670), in the case of deaths after 1925 and before 1953, the Administration of Estates Act 1925, and in the case of deaths after 1952, the Administration of Estates Act 1925 (construed as including references to the Intestates' Estates Act 1952 and the Family Law Reform Act 1987 (as the case may require)): see EXECUTORS AND ADMINISTRATORS.

5 *Elmsley v Young* (1835) 2 My & K 780; *Withy v Mangles* (1843) 10 Cl & Fin 215, HL; *Rook v A-G* (1862) 31 Beav 313; *Re Gray's Settlement, Akers v Sears* [1896] 2 Ch 802. See also --v--(1815) 1 Madd 36; *Re Clanchy's Will Trusts, Lynch v Edwards* [1970] 2 All ER 489, CA.

6 *Withy v Mangles* (1843) 10 Cl & Fin 215, HL; *Lucas v Brandreth (No 2)* (1860) 28 Beav 274.

7 *Watt v Watt* (1796) 3 Ves 244; *Bailey v Wright* (1811) 18 Ves 49 (affd (1818) 1 Swan 39); *Grafftey v Humpage* (1838) 1 Beav 46 (affd (1839) 3 Jur 622). However, where the wife was illegitimate it was held that the fund resulted to her and went to her husband as her personal representative: *Hawkins v Hawkins* (1834) 7 Sim 173.

8 *Worseley v Johnson* (1753) 3 Atk 758; *Garrick v Lord Camden* (1807) 14 Ves 372; *Cholmondeley v Lord Ashburton* (1843) 6 Beav 86; *Kilner v Leech* (1847) 10 Beav 362; *Re Fitzgerald* (1889) 58 LJ Ch 662.

9 *Re Winn, Brook v Whitton* [1910] 1 Ch 278; cf *Re Clanchy's Will Trusts, Lynch v Edwards* [1970] 2 All ER 489, CA. As to the time for ascertaining next of kin see also PARA 935 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(iii) Trusts in default of Issue/935. Trusts for statutory next of kin.

935. Trusts for statutory next of kin.

If the trust for the next of kin of a person contains any reference, express or implied¹, to any statute regulating the distribution of the estates of intestates², those persons take who would have taken if he had died intestate and, in the absence of any provision to the contrary, they take as tenants in common in the shares and manner in which they would have taken on an intestacy³. On a death intestate before 1926, a husband was not⁴, but a wife was⁵, a person entitled under the description of statutory next of kin, but they are both entitled as such on a death intestate since 1925⁶.

In a marriage settlement, the ultimate trust of the wife's fund, in the event of the husband surviving her, may be for the persons who would be her statutory next of kin if she had survived the husband and died intestate⁷. As a general rule, when a trust is created in favour of persons who take under any statute, and the only hypothesis stated is the death of some person intestate possessed of the personal property settled by the instrument creating the trust, the persons who take are the persons determined by the statute and ascertained at the time, that is to say at the death of the person in question⁸. However, the trust may be so worded as to show that the class of persons to be ascertained is not to be ascertained when the death did happen, but at some other time, as if the death had happened at that other time⁹. The question in each case is a question of grammatical construction. In the case of the foregoing ultimate trust of a wife's fund, the next of kin would have to be ascertained at the date of the husband's death¹⁰.

1 A reference to intestacy implies a reference to the Statute of Distribution (1670), or the Administration of Estates Act 1925, or the latter Act as amended by the Intestates' Estates Act 1952 and the Family Law Reform Act 1987 (as the case may require): see *Kidd v Frasier* (1851) 1 Ch R 518; *Re Gray's Settlement, Akers v Sears* [1896] 2 Ch 802; following *Garrick v Lord Camden* (1807) 14 Ves 372; *Maclean v Smith* [1927] NI 109, NI CA, where the next of kin were held entitled to settled realty; *Re Jackson* (1943) 113 L.J. Ch 78. See also *Cotton v Scarancke* (1815) 1 Madd 45. A reference to death unmarried contains no such implication: see *Halton v Foster* (1868) 3 Ch App 505; *Re Webber's Settlement* (1850) 19 L.J. Ch 445. A trust for 'relations' or 'relatives' is construed as a trust for the statutory next of kin, but no reference to the relevant statute is implied in such a trust for the purpose of determining the shares and manner in which the next of kin are to take: *Eagles v Le Breton* (1873) LR 15 Eq 148; *Re Gansloser's Will Trusts, Chartered Bank of India, Australia and China v Chillingworth* [1952] Ch 30, [1951] 2 All ER 936, CA. See also *Re Kilvert, Midland Bank Executor and Trustee Co Ltd v Kilvert* [1957] Ch 388, [1957] 2 All ER 196, distinguished in *Re Bourke's Will Trusts, Barclays Bank Trust Co Ltd v Canada Permanent Trust Co* [1980] 1 All ER 219, [1980] 1 WLR 539. In *Re Hughes, Loddiges v Jones* [1916] 1 Ch 493, a gift in a will of both real and personal estate to the persons entitled 'under the statute for the distribution of the estates of intestate persons' meant no more than 'by law', so that the heir-at-law was entitled to the real estate.

As to the construction of references in settlements to the Statutes of Distribution and to statutory next of kin see EXECUTORS AND ADMINISTRATORS.

2 As to the relevant statutes see PARA 934 note 4 ante.

3 *Downes v Bullock* (1858) 25 Beav 54 (affd (1860) 9 H.L. Cas 1 (will)); *Re Ranking's Settlement Trusts* (1868) LR 6 Eq 601; *Re Nightingale* [1909] 1 Ch 385. See, however, *Re Krawitz's Will Trusts, Krawitz v Crawford* [1959] 3 All ER 793, [1959] 1 WLR 1192.

4 *Garrick v Lord Camden* (1807) 14 Ves 372; *Milne v Gilbart* (1854) 5 De GM & G 510; *Noon v Lyon* (1875) 33 LT 199. Before 1926 a husband took the whole of his wife's personal estate on an intestacy by husband's right, and not under the Statute of Distribution (1670): see EXECUTORS AND ADMINISTRATORS.

5 See the Statute of Distribution (1670) s 3 (repealed); and EXECUTORS AND ADMINISTRATORS.

6 See the Administration of Estates Act 1925 Pt IV (ss 45-52) (as amended); the Family Law Reform Act 1987 ss 1, 18(1); and EXECUTORS AND ADMINISTRATORS. See also *Re Gilligan* [1950] P 32, [1949] 2 All ER 401.

7 See PARA 932 ante.

8 *Wheeler v Addams* (1853) 17 Beav 417; cf *Smith v Smith* (1841) 12 Sim 317; *Day v Day* (1870) 18 WR 417. See also *Wharton v Barker* (1858) 4 K & J 483; *Bullock v Downes* (1860) 9 HL Cas 1 (where the rule is stated with reference to wills).

9 *Re King's Settlement, Gibson v Wright* (1889) 60 LT 745 per Chitty J. As to the time for ascertaining next of kin see also PARA 934 ante.

10 *Pinder v Pinder* (1860) 28 Beav 44; *Chalmers v North* (1860) 28 Beav 175; *Re King's Settlement, Gibson v Wright* (1889) 60 LT 745; *Clarke v Hayne* (1889) 42 ChD 529; *Re Peirson's Settlement, Cayley v De Wend* (1903) 88 LT 794. There has, however, been a considerable conflict of authority on the point. For the contrary view see *Druitt v Seaward, Re Ainsworth, Ainsworth v Seaward* (1885) 31 ChD 234; *Re Bradley, Brown v Cottrell* (1888) 58 LT 631. The balance of judicial authority supports the view stated in the text.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(2) BENEFICIAL INTERESTS/(iii) Trusts in default of Issue/936. Effect of the phrase 'without having been married'.

936. Effect of the phrase 'without having been married'.

A trust for the statutory next of kin of the wife as if she had died intestate and 'without having been married', or 'without ever having been married', used to exclude the wife's issue, whether issue of the intended marriage who fail to attain a vested interest¹, or issue of a former² or subsequent marriage³. There might, however, be a context⁴ or special circumstances in connection with the particular settlement that might lead to the conclusion that it could not have been the intention to exclude the wife's children⁵. If the words used were as if she had died intestate and 'unmarried', the word 'unmarried', in the absence of any context, was taken to bear its primary meaning of 'never having been married'⁶. However, 'unmarried' is a word of flexible meaning, and might be construed according to the obvious intention of the persons using the word⁷. Accordingly, where the effect of giving the word its primary meaning would be to favour collaterals at the expense of lineals, the court interpreted it as meaning 'not having a husband living at her death', thus admitting issue⁸ and excluding a subsequent husband⁹.

A trust for the wife's next of kin on the death or remarriage of the husband, who took an interest for life or until remarriage if he survived his wife, has been held to take effect on the cesser of the prior interests and, the marriage having been terminated by divorce and the husband having remarried, the next of kin took on the death of the wife in the lifetime of her husband¹⁰.

1 *Re Deane's Trusts, Dudley v Deane* [1900] 1 IR 332; *Re Brydone's Settlement, Cobb v Blackburne* [1903] 2 Ch 84, CA; *Re Smith's Settlement, Wilkins v Smith* [1903] 1 Ch 373. The two last-mentioned cases, following the decision of Jessel MR in *Emmins v Bradford, Johnson v Emmins* (1880) 13 ChD 493, negative the view which was taken in several cases (*Re Ball's Trust* (1879) 11 ChD 270; *Upton v Brown* (1879) 12 ChD 872; *Re Arden's Settlement* [1890] WN 204; *Stoddart v Saville* [1894] 1 Ch 480; *Re Mare, Mare v Howey* [1902] 2 Ch 112) that a general rule was laid down in *Wilson v Atkinson* (1864) 4 De GJ & Sm 455 that such words of limitation were introduced merely to exclude the husband of the wife, and not to exclude any persons who might be her descendants. The view taken in *Re Brydone's Settlement, Cobb v Blackburne* supra was approved by the House of Lords in *Boyce v Wasbrough* [1922] 1 AC 425, HL.

2 *Emmins v Bradford, Johnson v Emmins* (1880) 13 ChD 493; *Boyce v Wasbrough* [1922] 1 AC 425, HL.

3 *Hardman v Maffett* (1884) 13 LR Ir 499.

4 There was such a context in *Wilson v Atkinson* (1864) 4 De GJ & Sm 455, where the trust was followed by a declaration that an illegitimate daughter should for the purposes of the trust be deemed to be a lawful child of the wife, the settlement containing no express provision for children or issue.

5 Eg the absence of any provision for the children or issue of the marriage: see *Re Deane's Trusts, Dudley v Deane* [1900] 1 IR 332.

6 *Blundell v De Falbe* (1888) 57 LJ Ch 576. See also *Heywood v Heywood* (1860) 29 Beav 9; *Clarke v Colls* (1861) 9 HL Cas 601 at 612, 615. Cf *Dalrymple v Hall* (1881) 16 ChD 715; *Re Sergeant, Mertens v Walley* (1884) 26 ChD 575 (cases on wills).

7 *Maugham v Vincent* (1840) 9 LJ Ch 329. See, however, *Boyce v Wasbrough* [1922] 1 AC 425 at 445-446, HL, per Lord Sumner.

8 *Maugham v Vincent* (1840) 9 LJ Ch 329; *Re Norman's Trust* (1853) 3 De GM & G 965 (where the expression 'without being married' was said to mean without having a husband at the time of death); *Pratt v Mathew* (1856) 8 De GM & G 522; *Re Saunders' Trust* (1857) 3 K & J 152; *Clarke v Colls* (1861) 9 HL Cas 601; *Re Woodhouse's Trusts* [1903] 1 IR 126. Cf *Day v Barnard* (1860) 1 Drew & Sm 351; *Re Jones, Last v Dobson* [1915] 1 Ch 246 (cases on wills).

It appears that a trust for the statutory next of kin of a wife as if she had died intestate and 'without having been married' or 'without ever having been married' includes her legitimate or illegitimate children or, if they predecease her, their issue. See also the Family Law Reform Act 1987 s 1 (see PARA 917 note 8 ante); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 125. As to the position prior to 4 April 1988 see EXECUTORS AND ADMINISTRATORS.

9 *Re Saunders' Trust* (1857) 3 K & J 152.

10 *Re Mathew's Trusts* (1876) 24 WR 960. However, the decision in that case, in so far as it was held that the husband's interest was destroyed by his second marriage during the wife's lifetime seems to be in conflict with *Re Pilkington's Settlement*, *Pilkington v Wright* (1923) 129 LT 629 and *Re Monro's Settlement*, *Monro v Hill* [1933] Ch 82. See also PARA 915 note 2 ante. As to the acceleration of subsequent interests generally see PARA 921 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(3) SETTLEMENTS OF PERSONALTY TO DEVOLVE WITH REALTY/937. In general.

(3) SETTLEMENTS OF PERSONALTY TO DEVOLVE WITH REALTY

937. In general.

It is often desired that the enjoyment and devolution of personal property and personal chattels, without conversion, is to accompany the limitations of some freehold estate settled by the same or another settlement¹. This is usually effected by assigning such personal property or personal chattels to trustees to be enjoyed or held with, or upon trusts corresponding as nearly as may be with the trusts affecting, the settled estate².

A settlement of chattels to devolve with land is commonly called making them heirlooms³.

1 As to the settlement of land see PARA 675 et seq ante. It is no longer possible to create settlements of land: see PARA 676 ante.

2 Jewels settled as heirlooms along with a settled estate which is subject to a power of appointment may themselves be subject to a corresponding but independent power of appointment: *Re Penton's Settlement Trusts, Penton v Langley*[1924] 2 Ch 192.

3 'Heirlooms' means something which although not by its own nature heritable, is to have a heritable character impressed upon it: *Byng v Byng* (1862) 10 HL Cas 171 at 183. This character may be imposed by a voluntary donor: *Seale v Hayne* (1863) 9 LT 570. As to heirlooms at common law see REAL PROPERTY vol 39(2) (Reissue) PARAS 89-90; EXECUTORS AND ADMINISTRATORS. Articles which can only be enjoyed by consumption or are perishable in a short time are not included in a direction that furniture and household goods, chattels and effects in or about a house are to be annexed to the house as heirlooms: *Hare v Pryce* (1864) 11 LT 101.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(3) SETTLEMENTS OF PERSONALTY TO DEVOLVE WITH REALTY/938. Devolution of personality settled before 1926.

938. Devolution of personality settled before 1926.

Where instruments came into operation before 1926, it was impossible to create an estate tail in personality¹, and an assignment or bequest of personality, either by way of immediate gift or executed trust², to devolve with realty or, in the case of chattels, a direction that they should be treated as heirlooms so far as the rules of law and equity permitted³, gave life interests in the personality or chattels to those who took life interests in the realty⁴, but such personality or chattels vested absolutely at birth in the first person who became entitled to the real estate for a vested estate of inheritance, whether in possession or remainder⁵, subject of course, if the estate was in remainder, to all prior limited interests, such as estates for life⁶.

Accordingly, a gift of chattels as heirlooms, or so far as the rules of law and equity permitted, to such persons as should from time to time be holders of a title, conferred an absolute interest on the first person who became beneficially entitled to the chattels as holder of the title⁷. This rule could be modified by an appropriate provision in the settlement⁸, provided that the words used were reasonably clear and certain⁹.

1 *Earl of Stafford v Buckley* (1750) 2 Ves Sen 170. See also *Ex p Sterne* (1801) 6 Ves 156. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

2 As to executory trusts to settle personality as realty see PERSONAL PROPERTY vol 35 (Reissue) PARAS 1229-1230; WILLS vol 50 (2005 Reissue) PARA 329.

3 These words did not make the trust executory or alter the trusts affecting the personality (*Lord Scarsdale v Curzon* (1860) 1 John & H 40), or prevent the settlement from transgressing the rule against perpetuities (*Portman v Viscount Portman* [1922] 2 AC 473, HL; *Re Hind, Bernstone v Montgomery* [1933] Ch 208 at 225). See also PERPETUITIES AND ACCUMULATIONS vol 35 (Reissue) PARA 1081.

4 *Gower v Grosvenor* (1740) 5 Madd 337; *Savile v Earl of Scarborough* (1818) 1 Swan 537; *Harrington v Harrington* (1868) 3 Ch App 564 at 573; *Robinson v Robinson* (1875) 33 LT 663. Cf *Montague v Lord Inchiquin* (1875) 32 LT 427; *Re Fowler, Fowler v Fowler* [1917] 2 Ch 307, CA.

5 *Trafford v Trafford* (1746) 3 Atk 347; *Duke of Bridgwater v Egerton* (1751) 2 Ves Sen 121; *Foley v Burnell* (1783) 1 Bro CC 274 (affd (1785) 4 Bro Parl Cas 319, HL); *Vaughan v Burslem* (1790) 3 Bro CC 101; *Fordyce v Ford* (1795) 2 Ves 536; *Ware v Polhill* (1805) 11 Ves 257; *Carr v Lord Erroll* (1808) 14 Ves 478; *Lord Southampton v Marquis of Hertford* (1813) 2 Ves & B 54 at 63; *Doncaster v Doncaster* (1856) 3 K & J 26; *Lord Scarsdale v Curzon* (1860) 1 John & H 40; *Re Johnson's Trusts* (1866) LR 2 Eq 716; *Re Fothergill's Estate, Price-Fothergill v Price* [1903] 1 Ch 149; *Re Parker, Parker v Parkin* [1910] 1 Ch 581; *Re Beresford-Hope, Aldenham v Beresford-Hope* [1917] 1 Ch 287; *Re Fowler, Fowler v Fowler* [1917] 2 Ch 307, CA; *Portman v Viscount Portman* [1922] 2 AC 473, HL; *Pole v Pole, Mundy Pole v Pole, Martin v Pole* [1924] 1 Ch 156, CA; *Barton v Moorhouse* [1935] AC 300, PC. Cf *Schank v Scott* (1874) 22 WR 513, where a life interest in a sum of money was given to a tenant in tail with remainder upon the trusts of the settled land, and an absolute interest was acquired in the personality on the execution of a disentailing deed. As to disentailing deeds see REAL PROPERTY vol 39(2) (Reissue) PARA 121 et seq.

6 Such an interest might be defeated by any event which would defeat the estate of the person becoming entitled to it in the realty (*Lady Pelham v Gregory* (1760) 3 Bro Parl Cas 204, HL; *Re Parker, Parker v Parkin* [1910] 1 Ch 581); but once vested it was not divested by death under 21 (*Foley v Burnell* (1783) 1 Bro CC 274 (affd (1785) 4 Bro Parl Cas 319, HL); *Vaughan v Burslem* (1790) 3 Bro CC 101; *Carr v Lord Erroll* (1808) 14 Ves 478; *Re Parker, Parker v Parkin* supra), or by death before the interest became indefeasibly vested, if ultimately in fact it did so vest (*Re Cresswell, Parkin v Cresswell* (1883) 24 ChD 102). Consequently such a phrase did not make the trust executory (*Vaughan v Burslem* (1790) 3 Bro CC 101 (overruling on this point *Gower v Grosvenor* (1740) 5 Madd 337); *Trafford v Trafford* (1746) 3 Atk 347; *Lord Scarsdale v Curzon* (1860) 1 John & H 40 at 50; *Countess Harrington v Earl of Harrington* (1871) LR 5 HL 87; *Portman v Viscount Portman* [1922] 2 AC 473 at 484, 495, HL), or extend or alter the disposition made of the personal estate (*Christie v Gosling* (1866) LR 1 HL

279 at 299), or imply a provision that the interest of a tenant in tail by purchase who died under the age of 21 would be defeated (*Re Parker, Parker v Parkin* supra).

7 *Lady Laura Tollemache v Earl and Countess of Coventry* (1834) 2 Cl & Fin 611, HL; *Mackworth v Hinxman* (1836) 2 Keen 658; *Re Viscount Exmouth, Viscount Exmouth v Praed* (1883) 23 ChD 158; *Re Hill, Hill v Hill* [1902] 1 Ch 537 (affd [1902] 1 Ch 807, CA). Cf *Rowland v Morgan* (1848) 2 Ph 764; *Campbell v Ingilby* (1856) 25 LJ Ch 761; *Re Johnston, Cockerell v Earl of Essex* (1884) 26 ChD 538; *Re Marquess of Bute, Marquess of Bute v Ryder* (1884) 27 ChD 196. The Legitimacy Act 1976, so far as it affects the succession to the dignity or title of honour, or the devolution of property settled with it, applies only to children born after 28 October 1959: see s 11, Sch 1 para 4(1), (3); and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 131. As to legitimisation generally see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 125 et seq. As to the rights of legitimised children see PARA 732 ante.

8 In this way it was possible to defeat the interest of a tenant in tail by purchase who died under the age of 21 (*Christie v Gosling* (1866) LR 1 HL 279; *Countess Harrington v Earl of Harrington* (1871) LR 5 HL 87; *Martelli v Holloway* (1872) LR 5 HL 532; *Viscount Hill v Dowager Viscountess Hill* [1897] 1 QB 483 at 495, CA; *Re Dayrell, Hastie v Dayrell* [1904] 2 Ch 496; *Re Lewis, Busk v Lewes* [1918] 2 Ch 308), or who did not come into actual possession of the land (*Potts v Potts* (1848) 1 HL Cas 671; *Lord Scarsdale v Curzon* (1860) 1 John & H 40; *Re Angerstein, Angerstein v Angerstein* [1895] 2 Ch 883; *Re Fothergill's Estate, Price-Fothergill v Price* [1903] 1 Ch 149; cf *Barton v Moorhouse* [1935] AC 300, PC). See also *Cox v Sutton* (1856) 25 LJ Ch 845. See also, as to 'actual possession', *Re Petre's Settlement Trusts, Legh v Petre* [1910] 1 Ch 290; *Re Duckett, Phillipotts v Fitzmaurice* [1918] 1 IR 110, Ir CA; *Re Duncombe, Wrixon-Becher v Faversham* [1932] 1 Ch 622, CA. As to the meaning of 'actually entitled to possession' see *Re Morrison's Settlement, Gatty v Dent-Brocklehurst* [1974] Ch 326, [1973] 3 All ER 1094.

9 *Foley v Burnell* (1783) 1 Bro CC 274 (affd (1785) 4 Bro Parl Cas 319, HL); *Lord Scarsdale v Curzon* (1860) 1 John & H 40; *Re Parker, Parker v Parkin* [1910] 1 Ch 581; *Re Lewis, Busk v Lewes* [1918] 2 Ch 308; *Portman v Viscount Portman* [1922] 2 AC 473, HL; *Re Coote, Cavers and Evans v Kaye* [1940] Ch 549, [1940] 2 All ER 363; *Re Morrison's Settlement, Gatty v Dent-Brocklehurst* [1974] Ch 326, [1973] 3 All ER 1094.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(3) SETTLEMENTS OF PERSONALTY TO DEVOLVE WITH REALTY/939. Devolution of personality settled after 1925.

939. Devolution of personality settled after 1925.

Where an instrument came into operation after 1925, but before 1 January 1997¹, an interest in tail, or in tail male, or in tail female, or in tail special, which interests are usually included in the expression 'entailed interests', could be created by way of trust in personal, as well as in real, property. An entailed interest could only be created by a settlement of real or personal property or its proceeds of sale (including the will of a person dying after 1925), or by an agreement for a settlement in which the trusts to affect the property were sufficiently declared².

If an entailed interest has been created in personality, it will have the like results as the creation of a similar estate in realty, including the right to bar the entail either absolutely or so as to create an interest equivalent to a base fee, and all statutory provisions relating to estates tail in real property apply to entailed interests in personal property³. In default of and subject to the execution of a disentailing assurance or the exercise of the testamentary power conferred by statute⁴, an entailed interest (to the extent of the property affected) devolves as an equitable interest, from time to time, upon the persons who would have been successively entitled to it as the heirs of the body (either generally or of a particular class) of the tenant in tail or other person, or as tenant by the courtesy⁵, if the entailed interest had, before 1 January 1926, been limited in respect of freehold land governed by the general law in force immediately before that date and such law had remained unaffected⁶.

1 As from 1 January 1997, it has no longer been possible to create entailed interests: see the Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1 para 5; and REAL PROPERTY vol 39(2) (Reissue) PARA 119. See also PARAS 611, 677 ante.

2 Such an interest in personality could be created either by means of the like expressions as those by which, before 1926, a similar estate tail could have been created by deed (not being an executory instrument) in freehold land (see the Law of Property Act 1925 s 130(1)) (repealed except in relation to any entailed interest created before 1 January 1997: see REAL PROPERTY vol 39(2) (Reissue) PARA 119; and PARA 678 note 11 ante) or by directing personal estate (including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms (which expression extends to chattels to which the Settled Land Act 1925 s 67 applies: see s 67(4); and PARAS 802 ante, 941 post)) to be enjoyed or held with or upon trusts corresponding to trusts affecting land in which an entailed interest has at any time been created and is subsisting: see the Law of Property Act 1925 s 130(3) (repealed). In the latter case, the trusts must follow the exact words of s 130(3) (repealed): *Re Jones, Public Trustee v Jones* [1934] Ch 315. As to the method of creating an entailed interest since 1925 see REAL PROPERTY vol 39(2) (Reissue) PARA 119.

3 Intermediate income pending the birth of a person who, on being born, would be entitled in possession as tenant in tail should not be accumulated, but is payable to the person next entitled in remainder: *Re Crossley's Settlement Trusts, Chivers v Crossley* [1955] Ch 627, [1955] 2 All ER 801.

4 See the Law of Property Act 1925 s 176; and REAL PROPERTY vol 39(2) (Reissue) PARA 141; WILLS vol 50 (2005 Reissue) PARAS 329, 671.

5 As to the abolition of tenancy by the courtesy see PARA 679 ante.

6 Law of Property Act 1925 s 130(4).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(3) SETTLEMENTS OF PERSONALTY TO DEVOLVE WITH REALTY/940. Powers and duties of trustees in respect of settled chattels.

940. Powers and duties of trustees in respect of settled chattels.

If furniture, jewels or other personal chattels are the subject of a settlement, the trustees, if and while the chattels are in their possession, are bound to keep them as if they were their own, as in the case of any other trust property¹. However, since such articles by their nature can only be enjoyed by the beneficiaries by delivery to them, it is usual to provide in the settlement that the trustees are not to be liable for such articles or to see to their condition or insurance. However, if the beneficiary in whose possession such articles are fails to insure them, the trustees have power to insure them and pay the premiums out of the income of capital money in their hands².

The trustees should keep an inventory of the articles, and should take any steps necessary to safeguard them in the event of its being apprehended that the beneficiary will dispose of them. The beneficiary may be required to sign an inventory of, but not to give security for, the chattels, unless there is reason to suppose that they will be in danger in his custody³. If the articles are assigned to the trustees by the settlement, the possession of them is that of the trustees, who may maintain an action against a wrongdoer for their conversion⁴.

1 As to the duties of trustees in respect of safe custody of trust property see TRUSTS vol 48 (2007 Reissue) PARA 959.

2 See the Trustee Act 1925 s 19 (as amended) (see TRUSTS vol 48 (2007 Reissue) PARA 1047); *Re Earl of Egmont's Trusts, Lefroy v Earl of Egmont* [1908] 1 Ch 821. The statutory power to insure is only in respect of loss or fire damage to an amount (including the amount of any insurance already on foot) not exceeding three quarters of the full value of the property (see the Trustee Act 1925 s 19(1)), but a wider power is often included in the settlement.

3 *Foley v Burnell* (1783) 1 Bro CC 274 at 279; *Conduitt v Soane* (1844) 1 Coll 285; *Temple v Thring* (1887) 56 LJ Ch 767.

4 *Barker v Furlong* [1891] 2 Ch 172. As to the rights of the trustees against the beneficiary's creditors see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 428.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(3) SETTLEMENTS OF PERSONALTY TO DEVOLVE WITH REALTY/941. Power to sell settled chattels.

941. Power to sell settled chattels.

If personal chattels have been settled without reference to settled land¹ on trusts creating entailed interests² in them, the trustees have power to sell the chattels or any of them provided that they obtain the consent of the usufructuary for the time being if of full age³.

If personal chattels have been settled so as to devolve with settled land⁴, or to devolve with it as nearly as may be in accordance with the law or practice in force at the date of the settlement⁵, or are settled together with land⁶, or upon trusts declared by reference to the trusts affecting land, a tenant for life of the land⁷ may sell the chattels or any of them⁸. However, no such sale may be made without a court order⁹.

Trustees having a power of sale of settled land, but having no power of sale of chattels settled to devolve with the land, are trustees for the purposes of the Settled Land Act 1925¹⁰ for the sale of such chattels, and can give a good discharge for the purchase money¹¹.

1 For the meaning of 'settled land' see PARA 680 text to note 2 ante; definition applied by the Law of Property Act 1925 s 205(1)(xxvi).

2 As to entailed interests see PARAS 715 et seq, 939 ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

3 See the Law of Property Act 1925 s 130(5). As to the proceeds of sale see PARA 943 post.

4 Chattels settled to devolve with a dignity, eg a baronetcy, are chattels settled to devolve with settled land according to this provision, and can be sold under it by the holder for the time being of the dignity: see *Re Sir J Rivett-Carnac's Will* (1885) 30 ChD 136.

5 For the meaning of 'settlement' see PARA 678 note 1 ante.

6 For the meaning of 'land' see PARA 680 note 1 ante.

7 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante. 'The land' means the land with which the chattels are to devolve, and it makes no difference that the land and chattels are settled by different instruments: see *Re Lord Stafford's Settlement and Will, Gerard v Stafford* [1904] 2 Ch 72. As to the settlement of chattels to devolve with land see PARA 937 et seq ante.

8 Settled Land Act 1925 s 67(1). As to the proceeds of sale see PARA 943 post. The Settled Land Act 1925 does not confer any power to lease chattels, and a tenant for life who lets a house with the chattels in it under the statutory powers is not entitled to any part of the compensation recovered from the tenant in respect of chattels damaged or missing: see *Re Lacon's Settlement, Lacon v Lacon* [1911] 1 Ch 351; revsd on another point [1911] 2 Ch 17, CA.

9 See the Settled Land Act 1925 s 67(3). As to applications to the court see PARA 792 et seq ante. Service on the children of the tenant for life is not required when their interests are sufficiently represented by the trustees: *Re Brown's Will* (1884) 27 ChD 179. On the other hand, service on a remainderman has been directed, to relieve the trustees from the sole burden of arguing the case: *Re Earl of Radnor's Will Trusts* (1890) 45 ChD 402 at 404, CA.

10 As to trustees for the purposes of the Settled Land Act 1925 see PARA 750 et seq ante.

11 See *Constable v Constable* (1886) 32 ChD 233.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(3) SETTLEMENTS OF PERSONALTY TO DEVOLVE WITH REALTY/942. Exercise of court's power to approve sale or purchase.

942. Exercise of court's power to approve sale or purchase.

The court's power to authorise a sale or purchase is discretionary, and must be exercised having regard to the circumstances of each particular case¹.

As a general rule, the circumstances that the tenant for life, who is in the position of a trustee having a discretionary power of sale which must be honestly exercised in the interest of all parties concerned², has incumbered his life estate under the settlement, ought to be excluded from consideration by the court³, and the court does not sanction a sale merely to relieve a tenant for life from the consequences of his own extravagance⁴, or to enable him to pay inheritance tax and live in the mansion house⁵, or merely to increase his income⁶. Moreover, as public considerations do not intervene, the court may be less ready to consent to the sale of heirlooms than to the sale of a mansion house⁷. However, a sale has been sanctioned to enable the tenant for life to keep up his position where he was in straitened circumstances through no fault of his own⁸.

On the purchase of a new mansion house, chattels settled to devolve with the old one may be sold if not suitable to be removed⁹, and, where chattels were directed to be annexed to and at all times kept in the mansion house, the court declined to make an order for sale of the house without a direction as to what should be done with the chattels¹⁰. No statutory provision is made for the court's authority being given retrospectively, but where an advantageous sale had been made a direction was given that the trustees should take no steps to recover the sold chattels¹¹.

1 *Re Earl of Radnor's Will Trusts* (1890) 45 ChD 402 at 407, 418, 424, CA; *Re Hope's Settled Estates* (1910) 26 TLR 413.

2 *Re Earl of Radnor's Will Trusts* (1890) 45 ChD 402, CA; *Re Hope's Settled Estates* (1910) 26 TLR 413.

3 *Re Duke of Marlborough's Settlement, Duke of Marlborough v Marjoribanks* (1885) 30 ChD 127 (affd (1886) 32 ChD 1, CA); *Re Beaumont's Settled Estates* (1888) 58 LT 916; *Re Earl of Radnor's Will Trusts* (1890) 45 ChD 402 at 410, CA.

4 *Re Hope's Settlement* (1893) [1899] 2 Ch 691n; *Re Hope, De Cetto v Hope* [1899] 2 Ch 679, CA.

5 *Re Fetherstonhaugh's Estate* (1898) 14 TLR 167 (a case concerning death duties which are now inheritance tax: see INHERITANCE TAXATION vol 24 (Reissue) PARA 401 et seq).

6 *Re Sebright, Sebright v Brownlow* (1912) 28 TLR 191.

7 *Lord Bruce v Marquess of Ailesbury* [1892] AC 356 at 363, HL. As to sanctioning a sale of the principal mansion house see PARA 791 ante.

8 *Re Lord John Thynne* (1884) 77 LT Jo 195 (where the income had been reduced by agricultural depression); *Re Townshend's Settlement* (1903) 89 LT 691. Cf *Re Sebright, Sebright v Earl Brownlow* (1914) 31 TLR 25; but see *Re Beaumont's Settled Estates* (1888) 58 LT 916.

9 *Browne v Collins* (1890) 62 LT 566.

10 *Re Brown's Will* (1884) 27 ChD 179.

11 *Re Ames, Ames v Ames* [1893] 2 Ch 479. The power to confirm past transactions (see PARA 876 ante) does not apply to chattels.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/4. SETTLEMENTS OF PERSONALTY/(3) SETTLEMENTS OF PERSONALTY TO DEVOLVE WITH REALTY/943. Application of proceeds of sale of settled chattels and entailed personalty.

943. Application of proceeds of sale of settled chattels and entailed personalty.

The net proceeds of sale of personal chattels settled without reference to settled land on trusts creating entailed interests¹ in them must be held in trust for and go to the same persons successively, in the same manner and for the same interests, as the chattels sold would have been held and gone if they had not been sold, and the income of investments representing such proceeds of sale must be applied accordingly².

The net proceeds of sale of personal chattels settled so as to devolve with settled land³ are capital money arising under the Settled Land Act 1925, and must be paid, invested or applied and otherwise dealt with in like manner in all respects as directed by that Act with respect to other capital money arising under the Act⁴, or may be invested in the purchase of other chattels of the same or any other nature which, when purchased, must be settled and held on the same trusts and devolve in the same manner as the chattels sold⁵. However, no such purchase may be made without a court order⁶.

Personal estate entailed (not being chattels settled as heirlooms⁷) may be invested, applied and otherwise dealt with as if it was capital money or securities representing capital money arising under the Settled Land Act 1925 from land settled on the like trusts⁸.

1 For the meaning of 'entailed interest' see PARA 678 note 11 ante. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

2 See the Law of Property Act 1925 s 130(5).

3 As to the sale of personal chattels see PARA 941 ante. For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 For the meaning of 'capital money arising under the Act' see PARA 795 ante. As to its application see PARA 808 ante. Money arising from the sale of chattels settled to devolve with land has been allowed to be applied in the discharge of incumbrances notwithstanding that the position of a minor tenant in tail in remainder was thereby prejudiced: see *Re Duke of Marlborough's Settlement, Duke of Marlborough v Marjoribanks* (1885) 30 ChD 127 (affd (1886) 32 ChD 1, CA); *Re Lord Stafford's Settlement and Will, Gerard v Stafford* [1904] 2 Ch 72. It has also been applied in payment for authorised improvements: see *Re Houghton Estate* (1885) 30 ChD 102. As to authorised improvements see PARA 809 et seq ante.

5 See the Settled Land Act 1925 s 67(2). The repair and renovation of other heirlooms settled by the same settlement, but remaining unsold, is within this provision: see *Re Waldegrave, Earl Waldegrave v Earl of Selborne* (1899) 81 LT 632.

6 See the Settled Land Act 1925 s 67(3). Cf para 941 note 9 ante.

7 Any reference to personal chattels settled as heirlooms extends to chattels to which *ibid* s 67 applies: s 67(4). See also PARA 941 ante.

8 Law of Property Act 1925 s 130(1) (repealed except in relation to any entailed interest created before 1 January 1997 by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4). As to the investment and application of capital money arising under the Settled Land Act 1925 see PARA 805 et seq ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(i) In general/944. Rights of tenant for life and remainderman.

5. CAPITAL AND INCOME AND WASTE

(1) INCOME AND CAPITAL RECEIPTS

(i) In general

944. Rights of tenant for life and remainderman.

A tenant for life of settled property is entitled ordinarily to the net income of the property¹. He will be entitled also to casual profits which accrue during the subsistence of the life interest, but not to capital receipts², unless, in either instance, the settlement provides otherwise³. Receipts that accrue to settled property may be either casual profits⁴, which accordingly belong to the tenant for life, or capital accretions⁵ or substitutions⁶. The answer to the question whether a particular receipt is capital or income may depend, not merely on its nature, but on the intention of the person from whom it comes⁷ or on statutory provision⁸.

The rule that a tenant for life is entitled to the income of property applies in general to wasting assets settled by deed or specifically by will, so, apart from statute⁹ and apart from the equitable principles applicable to a residuary bequest of property on trust for persons entitled in succession¹⁰, a tenant for life is entitled to the income of wasting property such as leaseholds¹¹ or to the income of mines lawfully worked¹². Whether a tenant for life may cut timber or open new mines depends, apart from statutory powers¹³, on whether he is unimpeachable for waste. If he is unimpeachable for waste, he will be entitled to the rents and profits¹⁴. If he is impeachable for waste but exercises the statutory power, he will be entitled beneficially to the proportion allowed him by statute¹⁵.

If property settled by will includes a reversionary interest in personalty, which interest is subject to a trust or duty that it should be sold but is retained unsold in the exercise by the trustees of a power for the benefit of the estate, the tenant for life will be entitled, in the absence of a contrary intention shown by the settlement, to a proportion of the capital in lieu of the income that has not been earned¹⁶.

1 See eg *Verner v General and Commercial Investment Trust*[1894] 2 Ch 239 at 258 (on appeal [1894] 2 Ch 239, CA); *Re Forster's Settlement, Forster v Custodian of Enemy Property for England* as reported in [1942] 1 All ER 180 at 184 (discretionary trust). The right of the tenant for life to income extends to the income of a fund set aside to provide portions payable on his death, subject, of course, to a contrary provision in the settlement: see *Wellesley v Earl of Mornington* (1857) 27 LJ Ch 150. As to the outgoings to be borne out of income see PARA 961 et seq post. As to the tenant for life see PARA 761 et seq ante.

2 See eg *Re Wilson's Estate* (1863) 3 De GJ & Sm 410 (compulsory enfranchisement of copyholds on acquisition compulsorily by a railway company, no fines being payable to the lord of the manor who was tenant for life).

3 See *Simpson v Bathurst, Shepherd v Bathurst*(1869) 5 Ch App 193 (fines on renewal of leases given to the tenant for life).

4 Examples of such casual profits are fines payable where leases are renewed under an obligation or custom (*Brigstocke v Brigstocke*(1878) 8 ChD 357, CA; *Re Medows, Norie v Bennett*[1898] 1 Ch 300); a bonus paid under the Irish Land Act 1903 on a sale by a tenant for life (*Re Goodall's Settlement, Fane v Goodall*[1909] 1 Ch 440, where the decision was the consequence of an express provision in the Irish Land Act 1904 s 3 (repealed); but in *Re Thorngate's Settlement, Churcher v A-G* (1915) 84 LJ Ch 561, such a bonus was held to be capital where the sale was by trustees and the provision previously mentioned did not apply); compensation for

damage done during military occupation of land in wartime (*Re Williams' Settlement, Williams Wynn v Williams*[1922] 2 Ch 750; *Re Pomfret's Settlement, Guest v Pomfret*[1952] Ch 48, [1951] 2 All ER 951, in which cases the tenant for life was unimpeachable for waste; cf *Gage and Roper v Pigott and de Jenner*[1919] 1 IR 23, Ir CA; *Re Thompson, Westminster Bank Ltd v Thompson*[1949] Ch 1, [1948] 2 All ER 223 (see note 5 infra)); damages for injury to a ferry caused in the exercise of statutory powers (*Re Lindsay's Settlement (No 1)*[1941] Ch 170, [1941] 1 All ER 104); a bonus payable under the Finance (No 2) Act 1931 (*Re Schopperle's Trusts*[1932] IR 457; see also *Re Fulford, Fulford v Hyslop*[1930] 1 Ch 71, where a tenant for life was held entitled to a sum in respect of money paid or deducted on account of income tax in respect of income accumulated during her minority). See also *Re Pelly's Will Trusts, Ransome v Pelly*[1957] Ch 1, [1956] 2 All ER 326, CA; *Menzies Trustees v Lindsay*1957 SC 44, where a life tenant was entitled to allowances by way of discharge and repayment of tax in respect of capital expenditure on agricultural land. As to such allowances see PARA 820 ante.

5 The following receipts have been held to be capital: a bonus payable on repayment of the value of securities deposited with the government during war (see *Re Oppenheim, Oppenheim v Oppenheim*[1917] 1 Ch 274); compensation paid for ornamental timber felled by the Crown for military purposes (see *Gage and Roper v Pigott and de Jenner*[1919] 1 IR 23, Ir CA); compensation for damage done during requisition in wartime (*Re Thompson, Westminster Bank Ltd v Thompson*[1949] Ch 1, [1948] 2 All ER 223; but cf *Re Pomfret's Settlement, Guest v Pomfret*[1952] Ch 48, [1951] 2 All ER 951 (see note 4 supra)); a forfeited deposit on an abortive sale by the tenant for life of part of the settled property (*Re Foster's Settled Estates*[1922] 1 Ch 348; see also *Earl of Shrewsbury v Countess of Shrewsbury* (1854) 18 Jur 397; *Re Ward's Settled Estate* [1919] WN 51); compensation paid under the Welsh Church Act 1914 for the extinction of the right of patronage of a benefice (*Re Lord Penrhyn's Settlement Trusts, Penrhyn v Robarts*[1923] 1 Ch 143); compensation in the nature of a gratuity awarded by the Compensation (Ireland) Commission for damage to the settled property (*Re Macnamara, Macnamara v Macnamara*[1936] 1 All ER 602); such part of the sum received on the encashment of national savings certificates after the death of the holder as represents interest earned during his life and capitalised at the end of each completed month (*Re Holder, National Provincial Bank Ltd v Holder*[1953] Ch 468, [1953] 2 All ER 1); the additional amount added to compensation under what is now the Town and Country Planning Act 1990 Pt IV (ss 107-118) (as amended), at all events where the parties have not expressly agreed to treat it as income (see *Re Hasluck, Sully v Duffin*[1957] 3 All ER 371, [1957] 1 WLR 1135); compensation paid for depreciation of land values, and compensation receivable for refusal, revocation or modification of planning permission (*Re Meux, Gilmour v Gilmour*[1958] Ch 154, [1957] 2 All ER 630). As to compensation payable under the Town and Country Planning Act 1990 see PARA 800 note 2 ante; and TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 914 et seq.

6 The fact that, through fortuitous circumstances, money has been substituted for an interest in property affords no ground for effecting a substitution of beneficial interests. Accordingly war damage value payments received in respect of settled leaseholds were applied in buying annuities for periods corresponding to the period of the leases, the annuities being themselves applied as the rents of the properties would have been applied: see *Re Scholfield's Will Trusts, Scholfield v Scholfield*[1949] Ch 341, [1949] 1 All ER 490.

7 Eg where a company makes a distribution, its intention may control whether the payment is capital or income: see eg *Re Whitehead's Will Trusts, Public Trustee v White*[1959] Ch 579 at 588, [1959] 2 All ER 497 at 501 per Harman LJ. See also PARAS 951-952 post.

8 See eg the Coal Act 1938 s 6, Sch 3 para 21(2) (repealed), under which the compensation was applicable as a substitution, so as to give the beneficiaries the like benefits that they would have had from the property (cf the principle stated in note 6 supra). See also *Re Duke of Leeds, Duke of Leeds v Davenport*[1947] Ch 525, [1947] 2 All ER 200; *Re Lucas, Bethune v Lucas*[1947] Ch 558, [1947] 2 All ER 213n; *Re Blandy-Jenkins, Blandy-Jenkins v Public Trustee*[1948] Ch 322, [1948] 1 All ER 582; *Williams v Sharpe*[1949] Ch 595, [1949] 2 All ER 102, CA.

9 See the Settled Land Act 1925 s 47 (capitalisation of part of mining rent: see PARA 843 ante), s 66 (capitalisation of part of proceeds of sale of timber: see PARAS 848 ante, 989-992 post).

10 As to such entitlement see PARA 945 post.

11 See *Milford v Peile* (1854) 17 Beav 602; *Hope v Hope* (1855) 1 Jur NS 770.

12 See *Daly v Beckett* (1857) 24 Beav 114. As to mines see further PARA 947 post.

13 As to the statutory power to cut timber see PARA 989 post; and as to the statutory power to grant mining leases see PARA 843 ante.

14 A provision that a tenant for life is unimpeachable for waste expresses an intention excluding the general rule that the price of land carried away and sold in the shape of minerals, stones or bricks is treated as capital: see *Re Ridge, Hellard v Moody*(1885) 31 ChD 504 at 508, CA; *Re Chaytor*[1900] 2 Ch 804 at 809. As to the position of a tenant for life in relation to waste see PARA 986 et seq post.

15 See PARA 843 ante (capitalisation of part of mining rent), PARA 947 post (mining royalties), and PARA 990 post (as regards timber).

16 As to the rights of the tenant for life in such a case see PARA 946 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(i) In general/945. Income of unauthorised investments pending sale.

945. Income of unauthorised investments pending sale.

If, under a disposition by will of residuary personal estate, personal property¹, not being an authorised investment², is held on trust to be converted³ and the proceeds are given in trust for persons entitled in succession, the general rule, which is always subject to a contrary intention found on the true construction of the will⁴, is that, if the property is retained unconverted without impropriety for the benefit of the trust, the person entitled to the life interest in the proceeds of sale is not entitled to the income of the property pending conversion but only to interest, conventionally at 4 per cent⁵, on the value of the property⁶. It seems that this principle⁷ does not apply to a settlement of personalty by deed in the absence of any express trust for conversion⁸. The principle never applied to a residuary gift of real estate by will⁹, and does not now apply to leaseholds with an unexpired term of more than 60 years¹⁰, but it continues to apply to a residuary gift of pure personalty¹¹. Where in the will there is a trust for sale with power to postpone sale or to retain investments unconverted, the tenant for life is ordinarily only entitled to interest on the capital value¹², but the will may well show an intention that the tenant for life should have the income¹³. The principle does not apply where the trust for sale does not arise until the death of the life tenant¹⁴, and the position is the same where the consent of the life tenant is necessary for a sale in his lifetime¹⁵. If there is no trust for sale and unauthorised investments are retained under a power, the tenant for life is entitled to the income¹⁶.

Where unauthorised investments which are to be sold are retained without impropriety for realisation, there should be an apportionment, subject to any contrary provision in the will, between income and capital¹⁷.

If the unauthorised investments have been made by trustees in breach of trust, and the trustees make good the breach, the remainderman is not entitled to an adjustment limiting any interest received by the life tenant to 4 per cent, since no loss has been sustained¹⁸. However, if in such circumstances there has been depreciation, the life tenant, although not a party to the breach of trust, is not entitled to any adjustment to make good any arrears of income unless he brings into account such income from the unauthorised investments as he has received¹⁹.

1 Although there is no difference for the purposes of the rule in *Howe v Earl of Dartmouth* (1802) 7 Ves 137 (as to which see EXECUTORS AND ADMINISTRATORS) between unauthorised investments of a permanent nature and of a wasting nature (*Re Nicholson, Eade v Nicholson* [1909] 2 Ch 111), yet, where trust property is of a wasting nature, realisation of it is necessary if it is to be enjoyed by persons beneficially entitled in succession. For this reason the first part of the rule in *Howe v Earl of Dartmouth* supra imposed an obligation to realise wasting property, and accordingly the tenant for life was entitled only to interest on the sum realised: see *Meyer v Simonsen* (1852) 5 De G & Sm 723; *Stroud v Gwyer* (1860) 28 Beav 130; *Brown v Gellatly* (1867) 2 Ch App 751.

2 See *Brown v Gellatly* (1867) 2 Ch App 751.

3 This applies even if the will contains a power to postpone conversion: see the text and notes 12-13 infra. The position is the same whether the will contains an express trust for conversion (*Dimes v Scott* (1828) 4 Russ 195) or the obligation for conversion arises by reason of the first part of the rule in *Howe v Earl of Dartmouth* (1802) 7 Ves 137 (see note 1 supra). Both *Howe v Earl of Dartmouth* supra and *Meyer v Simonsen* (1852) 5 De G & Sm 723 were cases where there was no express trust for conversion.

4 See eg *Scholefield v Redfern* (1863) 2 Drew & Sm 173; *Thursby v Thursby* (1875) LR 19 Eq 395. Commonly, the principle stated here is excluded by express provision that income of property until conversion is to be applied as income arising from the proceeds of sale: see eg *Morley v Mendham* (1856) 2 Jur NS 998; *Re Norrington, Brindley v Partridge* (1879) 13 ChD 654, CA; *Re Sherry, Sherry v Sherry* [1913] 2 Ch 508. For an

example where the contrary intention was not made out see *Re Evans' Will Trusts, Pickering v Evans* [1921] 2 Ch 309.

5 The general practice has been to allow interest at 4% per annum, but this is not a universal rule: see *Gibson v Bott* (1802) 7 Ves 89; *Meyer v Simonsen* (1852) 5 De G & Sm 723; *Brown v Gellatly* (1867) 2 Ch App 751; *Wentworth v Wentworth* [1900] AC 163, PC; *Re Woods, Gabellini v Woods* [1904] 2 Ch 4; *Re Beech, Saint v Beech* [1920] 1 Ch 40; *Re Baker, Baker v Public Trustee* [1924] 2 Ch 271; *Re Ellis, Nettleton v Crimmins* [1935] Ch 193; *Re Fawcett, Public Trustee v Dugdale* [1940] Ch 402 at 407; *Re Parry, Brown v Parry* [1947] Ch 23, [1946] 2 All ER 412. See also *Bartlett v Barclays Bank Trust Co Ltd (No 2)* [1980] Ch 515, [1980] 2 All ER 92. As to rates of interest generally see FINANCIAL SERVICES AND INSTITUTIONS vol 49 (2008) PARA 1303 et seq.

6 *Meyer v Simonsen* (1852) 5 De G & Sm 723; *Brown v Gellatly* (1867) 2 Ch App 751. See also *Wentworth v Wentworth* [1900] AC 163 at 171, HL, per Lord Macnaghten; *Re Oliver, Wilson v Oliver* [1908] 2 Ch 74 at 78. For general consideration of the rule see *Re Fawcett, Public Trustee v Dugdale* [1940] Ch 402; and EXECUTORS AND ADMINISTRATORS.

7 The principle is referred to as the second part of the rule in *Howe v Earl of Dartmouth* (1802) 7 Ves 137 or, where there is a trust for conversion, as the rule in *Dimes v Scott* (1828) 4 Russ 195: see EXECUTORS AND ADMINISTRATORS.

8 *Re Van Straubenzee, Boustead v Cooper* [1901] 2 Ch 779. See also *Milford v Peile* (1854) as reported in 2 WR 181; *Hope v Hope* (1855) 1 Jur NS 770; *Slade v Chaine* [1908] 1 Ch 522 at 533, CA.

9 See *Re Woodhouse* [1941] Ch 332, [1941] 2 All ER 265. See also EXECUTORS AND ADMINISTRATORS.

10 See *Re Gough, Phillips v Simpson* [1957] Ch 323, [1957] 2 All ER 193.

11 *Re Trollope's Will Trusts, Public Trustee v Trollope* [1927] 1 Ch 596.

12 *Re Chaytor, Chaytor v Horn* [1905] 1 Ch 233; *Re Beech, Saint v Beech* [1920] 1 Ch 40; *Re Berry, Lloyds Bank Ltd v Berry* [1962] Ch 97, [1961] 1 All ER 529. As to the rate of interest see note 5 supra.

13 See *Re Sheldon, Nixon v Sheldon* (1888) 39 ChD 50 (power to continue investments); *Re Thomas, Wood v Thomas* [1891] 3 Ch 482; *Re Inman, Inman v Inman* [1915] 1 Ch 187. As regards bequests of businesses see *Re Chancellor, Chancellor v Brown* (1884) 26 ChD 42, CA; *Re Elford, Elford v Elford* [1910] 1 Ch 814. See also TRUSTS vol 48 (2007 Reissue) PARA 746.

14 *Alcock v Sloper* (1833) 2 My & K 699. See also *Green v Britten* (1863) 1 De GJ & Sm 649, as explained in *Brown v Gellatly* (1867) 2 Ch App 751 at 757.

15 *Re Rogers, Public Trustee v Rogers* [1915] 2 Ch 437.

16 *Re Wilson, Moore v Wilson* [1907] 1 Ch 394; *Re Nicholson, Eade v Nicholson* [1909] 2 Ch 111.

17 See eg *Re Owen, Slater v Owen* [1912] 1 Ch 519; and EXECUTORS AND ADMINISTRATORS. Income tax at the basic rate is deductible in the computation of what sum put out at 4% interest will amount to the actual annual product: see *Re Hengler, Frowde v Hengler* [1893] 1 Ch 586. As to the rate of interest see note 5 supra.

18 *Stroud v Gwyer* (1860) 28 Beav 130; *Re Appleby, Walker v Lever, Walker v Nisbet* [1903] 1 Ch 565 at 566, CA; *Slade v Chaine* [1908] 1 Ch 522, CA, distinguishing *Re Hill, Hill v Hill* (1881) 50 LJ Ch 551. The rule stated here applies even where the same person is both the trustee and the tenant for life: *Re Hoyles, Row v Jagg (No 2)* [1912] 1 Ch 67. As to the rate of interest see note 5 supra.

19 *Re Bird, Re Evan Dodd v Evans* [1901] 1 Ch 916, cited in *Re Alston, Alston v Houston* [1901] 2 Ch 584.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(i) In general/946. Apportionment of amount realised on sale.

946. Apportionment of amount realised on sale.

Where under a residuary gift contained in a will personal property that has not been bearing income is held on trust for sale but, without impropriety, has not been sold, the tenant for life is entitled to a proportion of the capital when it is received¹. This principle is the corollary of the rule previously discussed², and, like it, does not apply to realty³ and yields to the expression of a contrary intention in the will⁴. The principle does not apply to a settlement which does not contain a trust for conversion⁵.

If an authorised security proves insufficient on realisation to meet both arrears of income and capital, the amount realised should be apportioned⁶, unless the settlement otherwise provides, between income and capital, so that the loss falls fairly on both⁷. Until realisation of the security the tenant for life is generally entitled to the income⁸ and, in the case of dividends from shares, is normally entitled to dividends declared during his lifetime⁹.

However, where interest, as and when it is credited, is capitalised under agreement, in effect, between the person acquiring a security and the borrower, and is payable ultimately with the capital, the accretions arising before but paid after the testator's death are capital as between the remainderman and the tenant for life¹⁰.

1 *Re Earl of Chesterfield's Trusts* (1883) 24 ChD 643. See further EXECUTORS AND ADMINISTRATORS.

2 Ie the rule in *Howe v Earl of Dartmouth* (1802) 7 Ves 137 at 148: see PARA 945 ante. It is, indeed, a branch of that rule: see *Re Hey's Settlement Trusts, Hey v Nickell-Lean* [1945] Ch 294 at 315, [1945] 1 All ER 618 at 627 per Cohen J.

3 *Re Woodhouse, Public Trustee v Woodhouse* [1941] Ch 332, [1941] 2 All ER 265.

4 See eg *Re Lewis, Davies v Harrison* [1907] 2 Ch 296 where the will contained a clause that property not actually producing income was not to be treated as producing income, but the clause did not apply to the property in question as the income was produced and only its payment had been postponed.

5 *Re Van Straubenzee, Boustead v Cooper* [1901] 2 Ch 779.

6 Where a receiver was in possession of a mortgaged colliery, the proceeds of working the colliery, as and when received, were apportioned between capital and income, the apportionment being made by computing what sum put out at 4% interest at the testator's death would amount to the proceeds received: *Re Godden, Teague v Fox* [1893] 1 Ch 292. As to the rate of interest see PARA 945 note 5 ante.

7 *Re Moore, Moore v Johnson* (1885) 54 LJ Ch 432; *Re Alston, Alston v Houston* [1901] 2 Ch 584; *Re Atkinson, Barbers' Co v Grose-Smith* [1904] 2 Ch 160, CA; *Re Walker's Settlement Trusts, Watson v Walker* [1936] Ch 280; *Re Morris's Will Trusts, Public Trustee v Morris* [1960] 3 All ER 548, [1960] 1 WLR 1210. A provision that property not actually producing income should not be treated as producing any income does not exclude this apportionment: *Re Hubbuck, Hart v Stone* [1896] 1 Ch 754, CA.

8 *Re Broadwood's Settlements, Broadwood v Broadwood* [1908] 1 Ch 115; *Re Coaks, Coaks v Bayley* [1911] 1 Ch 171.

9 See *Re Sale, Nisbet v Philp* [1913] 2 Ch 697 at 703; and PARA 950 post.

10 See *Re Holder, National Provincial Bank Ltd v Holder* [1953] Ch 468, [1953] 2 All ER 1 (national savings certificates), in which such accretions were capital, despite a direction that no part of any interest received after the testator's death should be treated as capital.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(ii) Particular Receipts/947. Mines and minerals.

(ii) Particular Receipts

947. Mines and minerals.

Apart from statute, the general principle is that, as between tenant for life and remainderman, the price of minerals¹ gotten that is paid by a mining lessee is capital, as it is paid in respect of a part of the land that is carried away and sold; however, this rule yields to an expression of contrary intention in the settlement and, if the mines were open mines when they were settled, such a contrary intention is inferred unless the inference is excluded by the settlement². Accordingly the tenant for life of a settled estate, where mines were opened³, or contracted to be leased⁴, by the settlor, is entitled to royalties payable in respect of minerals gotten; and the same applies where the mines were demised by trustees of the settlement in exercise of a power of leasing given by the settlor⁵. Subject to statute, the principle extends to stone⁶, brickfields⁷ and gravel⁸.

A tenant for life impeachable for waste was not entitled to open new mines although he had the right to work open mines⁹.

However, where the statutory power of granting mining leases¹⁰ is exercised¹¹, a fraction of the rent¹² must be set aside as capital, whether the mines were or were not already worked, unless a contrary intention is expressed in the settlement¹³.

1 The principle extends equally to stone and brick earth: *Re Ridge, Hellard v Moody*(1885) 31 ChD 504, CA.

2 *Re Ridge, Hellard v Moody*(1885) 31 ChD 504 at 508, CA; *Re Chaytor*[1900] 2 Ch 804 at 809 (the exception with regard to open mines rests on inference of the settlor's intention). The tenant for life is entitled to whatever the settlor, as owner in fee, would have taken as income, including the dead rent and royalties: *Re Kemeys-Tynte, Kemeys-Tynte v Kemeys-Tynte*[1892] 2 Ch 211 at 215. As to the meaning of 'open mines' see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 7-11.

3 See *Brigstocke v Brigstocke*(1878) 8 ChD 357 at 363, CA; *Re Canner, Bury v Canner* (1923) 155 LT Jo 211.

4 *Re Kemeys-Tynte, Kemeys-Tynte v Kemeys-Tynte*[1892] 2 Ch 211.

5 *Daly v Beckett* (1857) 24 Beav 114 at 123.

6 See *Re Ridge, Hellard v Moody*(1885) 31 ChD 504 at 508, CA, per Lindley LJ; *Leppington v Freeman* (1891) 40 WR 348, CA.

7 *Miller v Miller*(1872) LR 13 Eq 263; *Leppington v Freeman* (1891) 40 WR 348, CA; *Re North, Garton v Cumberland*[1909] 1 Ch 625.

8 *Earl of Cowley v Wellesley*(1866) LR 1 Eq 656.

9 As to this aspect of the doctrine of waste see PARA 987 post.

10 ie the power conferred by the Settled Land Act 1925 s 41(ii): see PARAS 837-839, 843 ante.

11 As to the position where the tenant for life has an express power of leasing see *Earl Lonsdale v Lowther*[1900] 2 Ch 687.

12 For the meaning of 'rent' see PARA 801 note 1 ante.

13 See the Settled Land Act 1925 s 47; and PARA 843 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(ii) Particular Receipts/948. Damages for breach of lessee's covenants.

948. Damages for breach of lessee's covenants.

Money, not being rent, received since 1925¹ by way of damages or compensation for breach of any covenant² by a lessee or grantee contained in any lease³ or grant of settled land⁴, whenever the lease or grant was made and whether it was made under the statutory powers or not, unless in any case the court⁵ on the application of the tenant for life⁶ or the trustees of the settlement⁷ otherwise directs, is deemed to be capital money arising under the Settled Land Act 1925⁸ and must be paid to or retained by the trustees of the settlement, or paid into court⁹, and invested or applied, accordingly¹⁰.

1 Before 1926 damages paid by a lessee to a tenant for life, unimpeachable for waste, for breach of repairing covenants in a lease of settled land belonged to the tenant for life and were not capital money: see *Re Lacon's Settlement, Lacon v Lacon* [1911] 2 Ch 17, CA, where the lease had been granted in 1888 by a predecessor in title. As to the liability of the tenant for life for waste see PARA 986 et seq post.

2 As to damages recoverable from a lessee for breach of covenants see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 454 et seq.

3 For the meaning of 'lease' see PARA 685 note 13 ante.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

5 As to applications to the court see PARAS 792-793 ante.

6 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

7 For the meaning of 'trustees of the settlement' see PARA 750 note 1 ante. As to the trustees see PARA 750 et seq ante.

8 As to capital money arising under the Settled Land Act 1925 see PARA 795 ante.

9 As to the payment of money into court see PARA 798 note 8 ante.

10 See the Settled Land Act 1925 s 80(1), (5). See also s 80(4), (6); and PARA 801 ante. As to the application of fire insurance money where the settled land was leased see *Mumford Hotels Ltd v Wheler* [1964] Ch 117, [1963] 3 All ER 250.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(ii) Particular Receipts/949. Consideration for accepting surrender of leases.

949. Consideration for accepting surrender of leases.

Since 1925¹ all money, not being rent² or a rentcharge, received on the exercise by a tenant for life³ of the statutory power to accept a surrender⁴, unless the court⁵, on an application made within six months after its receipt or within such further time as the court may in special circumstances allow, otherwise directs⁶, is capital money arising under the Settled Land Act 1925⁷.

1 Before 1926 money paid to a legal tenant for life as the consideration for accepting the surrender of a lease by virtue of his common law powers belonged to him even if the lease surrendered had been granted under statutory power (*Re Hunloke's Settled Estates, Fitzroy v Hunloke* [1902] 1 Ch 941; *Re Penrhyn's Settlement, Lord Penrhyn v Pennant* [1922] 1 Ch 500); although, where a surrender was accepted by an equitable tenant for life, any consideration for it did not belong to him but had to be paid by instalments to him and the other persons entitled to the rent (*Re Rodes, Sanders v Hobson* [1909] 1 Ch 815). Under the law in force since 1925 the tenant for life is the legal reversioner in every case, but it seems that the effect of the Settled Land Act 1925 s 16(1)(i), which makes him an express trustee of the settled land (see PARA 767 ante), is to prevent him from exercising his common law powers so as to obtain any such consideration for himself.

2 For the meaning of 'rent' see PARA 801 note 1 ante. A tenant for life who in good faith accepts a surrender and grants a new lease at an increased rent is entitled to the increased rent during the unexpired part of the original term: see *Re Wix, Hardy v Lemon* [1916] 1 Ch 279.

3 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

4 As to the power to accept such surrenders see PARA 859 ante.

5 As to applications to the court see PARAS 792-793 ante.

6 There appears to be no reported case in which the court has given such a direction, but as to the principles which it might be expected to apply in directing apportionment between capital and income see *Cottrell v Cottrell* (1885) 28 ChD 628; *Re Robinson's Settlement Trusts* [1891] 3 Ch 129; *Re Fullerton's Will* [1906] 2 Ch 138; *Re Duke of Westminster's Settled Estates, Duke of Westminster v Earl of Shaftesbury* [1921] 1 Ch 585 (transaction regarded as cross-sales and purchase of the surrendered leases).

7 See the Settled Land Act 1925 s 52(7); and PARA 859 ante. For the meaning of 'capital money arising under the Act' see PARA 795 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(ii) Particular Receipts/950. Income of stocks and shares.

950. Income of stocks and shares.

If stocks or shares of a public company¹ are settled, the tenant for life is entitled to all dividends declared out of current profits in respect of any period commencing and ending² during the continuance of his interest at whatever rate³, and whether described as extraordinary or special dividends⁴ or bonuses⁵. His rights to the entire dividend declared are not affected by the fact that the profits out of which the dividend is declared include money received by the company in respect of an old debt⁶, or profits made in past years which have been put by under the name of a reserve fund⁷, or that the amount declared covers arrears of a cumulative dividend⁸. Moreover, where during the continuance of a life interest arrears of dividend are satisfied by, for example, an issue of funding certificates or shares or other property, the tenant for life is entitled to the property so issued⁹.

Conversely, a tenant for life is not entitled to any part of dividends declared in a financial year of the company that falls wholly after his death, as there is no right to a dividend until it is declared¹⁰. Therefore, where preference shares carried a right to a cumulative preferential dividend as and when the directors decided that one should be declared and the tenant for life of the shares died while the preference dividends were in arrear, all future dividends (including any that might cover the arrears) in respect of periods after the death of the tenant for life belonged to the remainderman¹¹. The position is the same where preference shares carry a right to a fixed cumulative preferential dividend and, no dividends having been paid for some years before the death of the tenant for life, dividends are paid in financial years after his death to meet the arrears¹².

In general, a limited company that is not in liquidation cannot, except by reduction of capital, return capital to shareholders, and accordingly other distributions are by way of dividing profits, so that, when these are paid to the trustees of settled shares, they are received as income¹³, but other considerations apply where there is an increase of capital by way of capitalisation of profits¹⁴. In accordance with these principles, proper distributions of surplus assets to shareholders prior to the liquidation of a company are usually income¹⁵, and, where trustees sell stock inflated in value by a contingent right to receive an income payment, the existence of such right makes the price in the hands of the trustees partially an income receipt¹⁶. However, a distribution out of money standing to the credit of a company's share premium account is to be regarded as a payment made in reduction of capital¹⁷.

Distributions to shareholders made in the liquidation of a limited company are capital¹⁸.

Where units in a fixed investment trust are settled, the trustees must inquire into the source of all distributions distributed by the investment trust as capital distributions, and must treat them as capital or income as if the trustees were the holders of the shares from which the sums distributed are derived¹⁹.

Where shares have been purchased in breach of trust there is jurisdiction to apportion whatever may have been received by way of dividend distribution, or to allocate it to capital, so that beneficial rights are not altered²⁰.

¹ See *Re White, Theobald v White* [1913] 1 Ch 231. As to stocks and shares of public companies see COMPANIES vol 15 (2009) PARA 1042 et seq.

2 See generally *Re Armitage, Armitage v Garnett* [1893] 3 Ch 337 at 346, CA, applied in *Re Sale, Nisbet v Philip* [1913] 2 Ch 697. As to the apportionment of dividends under the Apportionment Act 1870 see PARAS 957-960 post.

3 *Barclay v Wainewright* (1807) 14 Ves 66; *Price v Anderson* (1847) 15 Sim 473.

4 *Re Hopkins' Trusts* (1874) LR 18 Eq 696.

5 *Preston v Melville* (1848) 16 Sim 163; *Johnson v Johnson* (1850) 15 Jur 714; *Hebert v Bateman* (1853) 1 WR 191; *Murray v Glasse* (1853) 23 Lj Ch 126; *Plumbe v Neild* (1860) 29 Lj Ch 618; *Dale v Hayes* (1871) 40 Lj Ch 244. Cf *Re Tedlie, Holt v Croker* (1922) 91 Lj Ch 346.

6 *Maclarens v Stainton* (1861) 3 De GF & J 202; *Edmondson v Crosthwaite* (1864) 34 Beav 30.

7 *Re Alsbury, Sugden v Alsbury* (1890) 45 ChD 237; *Re Northage, Ellis v Barfield* (1891) 60 Lj Ch 488. As to reserve funds see COMPANIES vol 15 (2009) PARA 1413.

8 *Re Wakley, Wakley v Vachell* [1920] 2 Ch 205, CA; *Re Marjoribanks, Marjoribanks v Dansey* [1923] 2 Ch 307; *Re Joel, Johnson v Joel* [1936] 2 All ER 962. Cf *First Garden City Ltd v Bonham-Carter* [1928] Ch 53. As to cumulative dividends see COMPANIES vol 15 (2009) PARA 1408.

9 *Re Pennington, Stevens v Pennington* [1915] WN 333; *Re Sandbach, Royds v Douglas* [1933] Ch 505; *Re MacIver's Settlement, MacIver v Rae* [1936] Ch 198; *Re Smith's Will Trusts* [1936] 2 All ER 1210. However, a cash bonus paid in consideration of a release of preferential rights in respect of capital has been held to be capital: *Bates v Mackinley* (1862) 31 Beav 280; *Re Tedlie, Holt v Croker* (1922) 91 Lj Ch 346.

10 However, it may be that, on the true construction of the testator's will and having regard to special circumstances of the distribution, a distribution of compensation stock by way of capital profits dividend declared after the testator's death in respect of a date during his lifetime will be capital of his estate: see *Re Winder's Will Trusts, Westminster Bank Ltd v Fausset* [1951] Ch 916 at 921, [1951] 2 All ER 362 at 365 per Romer J. Cf *Manclark v Thomson's Trustees* 1958 SC 147. So, too, when a tenant for life has consented to a capital investment of trust funds by purchasing shares in a company which proposes to distribute stock that it has received by way of compensation, the tenant for life will fail, by reason of his prior consent, to make good a claim based on the principle that the distribution of the stock by the company is a distribution of income: see *Re Maclarens Settlement Trusts, Royal Exchange Assurance v Maclarens* [1951] 2 All ER 414.

11 *Re Sale, Nisbet v Philip* [1913] 2 Ch 697, applying *Re Taylor's Trusts, Matheson v Taylor* [1905] 1 Ch 734. See also *Re Marjoribanks, Marjoribanks v Dansey* [1923] 2 Ch 307, where arrears of cumulated preference dividend (some of which had accrued before the testatrix's death) paid after her death were held to pass as income of her residuary estate.

12 *Re Grundy, Grundy v Holme* (1917) 117 LT 470; *Re Wakley, Wakley v Vachell* [1920] 2 Ch 205, CA.

13 See *Re Bates, Mountain v Bates* [1928] Ch 682; *Hill v Permanent Trustee Co of New South Wales Ltd* [1930] AC 720 at 731, PC; *Re Doughty, Burridge v Doughty* [1947] Ch 263 at 270, [1947] 1 All ER 207 at 211, CA, per Cohen LJ; *Re Harrison's Will Trusts, Re Harrison's Settlement, Harrison v Milborne-Swinnerton-Pilkington* [1949] Ch 678. The fact that a company describes an income distribution as being capital does not alter its nature: see *Re Doughty, Burridge v Doughty* supra at 272 and 212 per Morton LJ; *Re Morris's Will Trusts, Public Trustee v Morris* [1960] 3 All ER 548, [1960] 1 WLR 1210.

14 *Hill v Permanent Trustee Co of New South Wales Ltd* [1930] AC 720 at 731, PC. As to the effect of capitalisation of profits see PARA 951 post.

15 See *Re Palmer, Palmer v Cassel* (1912) 28 TLR 301; *Re Tedlie, Holt v Croker* (1922) 91 Lj Ch 346. The following group of cases arose out of the distribution, as 'capital profits dividend', of a sum of British Transport Stock issued to a company as compensation on nationalisation: *Re Sechiari, Argenti v Sechiari* [1950] 1 All ER 417 (distribution treated as income); *Re Kleinwort's Settlements, Westminster Bank Ltd v Bennett* [1951] Ch 860, [1951] 2 All ER 328; *Re Rudd's Will Trusts, Wort v Rudd* [1952] 1 All ER 254.

16 See *Thomson's Trustees v Thomson* 1955 SC 476 (where trustees sold stock with the right attached to it, by resolution of the company, to receive a sum of government stock to be distributed by way of capital profits dividend to which the tenant for life would have been entitled (see note 10 supra) if the stock had not been sold). *Thomson's Trustees v Thomson* supra was distinguished in *Manclark v Thomson's Trustees* 1958 SC 147, where the settlement was by will and the resolution had been passed before the testator's death.

17 See the Companies Act 1985 s 130; and COMPANIES vol 15 (2009) PARA 1146. See also *Re Duff's Settlements, National Provincial Bank Ltd v Gregson* [1951] 1 Ch 923, [1951] 2 All ER 534, CA.

18 *Nicholson v Nicholson* (1861) 30 LJ Ch 617; *Re Armitage, Armitage v Garnett* [1893] 3 Ch 337, CA; *Re Palmer, Palmer v Cassel* (1912) 28 TLR 301; *IRC v Burrell* [1924] 2 KB 52, CA; *Hill v Permanent Trustee Co of New South Wales Ltd* [1930] AC 720 at 729, PC. Cf *Re Pennington, Pennington v Pennington* [1914] 1 Ch 203, CA, where payments made in respect of debenture interest in a winding up were income. As to the apportionment of mortgage interest see PARA 982 post.

19 *Re Whitehead's Will Trusts, Public Trustee v White* [1959] Ch 579, [1959] 2 All ER 497.

20 See *Re Maclarens Settlement Trusts, Royal Exchange Assurance v Maclarens* [1951] 2 All ER 414 at 420 per Harman J; *Re Kleinwort's Settlements, Westminster Bank Ltd v Bennett* [1951] Ch 860 at 963, [1951] 2 All ER 328 at 330 per Vaisey J; *Re Rudd's Will Trusts, Wort v Rudd* [1952] 1 All ER 254 at 258-259 per Upjohn J.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(ii) Particular Receipts/951. Effect of capitalisation of profits.

951. Effect of capitalisation of profits.

A company which has the power of increasing its capital¹ can either distribute its profits as dividend or convert them into capital, and, if the company validly exercises this power, that exercise is binding on all persons interested under the testator or settlor in the shares, and consequently what is paid by the company as dividend goes to the tenant for life, and what is paid by the company to the shareholder as capital, or appropriated as an increase of the capital stock in the concern, enures to the benefit of all interested in the capital². Accordingly, where a company having these powers issued new shares which represented a portion of its current earnings that had been applied to necessary works, those new shares were held to be capital³. Where a company declared a bonus dividend out of accumulated profits, and at the same time made an issue of new shares for a corresponding amount among its shareholders in proportion to the existing interests, and applied the bonus dividend in paying the calls on such new shares, undivided profits had been effectively appropriated and dealt with so as to become capital stock⁴. Also, where a trust held shares in a company, which underwent a demerger into two companies (the original company and the new company), the trust being issued with shares in the new company, the new shares were held to form part of the capital of the trust fund⁵.

1 This power is possessed by all companies limited by shares or limited by guarantee and having a share capital, if authorised by their articles: see the Companies Act 1985 s 121(1), (2); and COMPANIES vol 15 (2009) PARA 1160. Formerly, where a bonus was distributed by a company as an extraordinary distribution out of profits and the company had no power to increase capital, the bonus (not being by way of increased dividend) was treated as a capital receipt: see eg *Paris v Paris* (1804) 10 Ves 185; *Witts v Steere* (1807) 13 Ves 363; *Ward v Combe* (1836) 7 Sim 634.

2 *Bouch v Sproule* (1887) 12 App Cas 385, HL. If the company's intention to capitalise is clear, the fact that the shareholders have an option to take cash or new shares does not affect the position as between the tenant for life and the remainderman: *Re Evans, Jones v Evans* [1913] 1 Ch 23. If the option in such a case is vested in trustees, there is no right to elect between them and their beneficiaries and they must take the dividend in the capitalised form: *Re Evans, Jones v Evans* supra.

3 *Re Barton's Trust* (1868) LR 5 Eq 238.

4 *Baring v Lady Ashburton* (1868) 16 WR 452; *Bouch v Sproule* (1887) 12 App Cas 385, HL.

5 *Re Lee, Sinclair v Lee* [1993] Ch 497, [1993] 3 All ER 926.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(ii) Particular Receipts/952. Determination of question whether profits capitalised.

952. Determination of question whether profits capitalised.

A company has the power to determine conclusively against the world whether or not it will capitalise its profits¹, and it is a question of fact in each case whether a company has or has not done so. Regard must be had to both the form and the substance of the transaction², and a statement by a company that the distribution is one of capital will be ineffective if the company has not taken the necessary steps to effect a capitalisation³. Where a company has power to increase its capital and appropriate its profits to such increase, it cannot be considered as having converted any part of its profits into capital when it has made no such increase⁴. It follows that the mere carrying over of profits by such a company to a reserve fund⁵ or suspense account⁶, or the temporary devotion of them to capital purposes⁷, does not suffice to convert them into capital. Distributions out of profits by way of redemption of subscribed capital of a company are capital⁸, unless such payments are invalid by reason of failure on the part of the company to observe the necessary formalities, in which case they belong as income to the tenant for life⁹.

If an option is given to the shareholder to take either a cash dividend or shares, the court determines from the scheme as a whole whether the profits dealt with are or are not capitalised¹⁰. However, in the latter case the tenant for life is not entitled to the entire value of the shares allotted in respect of dividend, but only to so much of the proceeds of realisation of such shares as represent the dividend, and the balance ought to be applied as capital¹¹.

If the settlement contains an express declaration that bonuses are to be treated as income or as capital, the rights of the tenant for life are governed by the declaration¹².

1 *IRC v Blott, IRC v Greenwood* [1921] 2 AC 171, HL; *IRC v Fisher's Executors* [1926] AC 395, HL; *Re Taylor, Waters v Taylor* [1926] Ch 923; *IRC v Wright* [1927] 1 KB 333, CA. Cf *Re Schopperle's Trusts* [1932] IR 457, where it was held that a similar determination by a foreign government was binding as between the tenant for life and remaindermen. See also COMPANIES vol 15 (2009) PARA 1420.

2 *Bouch v Sproule* (1887) 12 App Cas 385, HL; *Re Malam, Malam v Hitchens* [1894] 3 Ch 578 at 585. In determining the question the surrounding circumstances must be considered: *Re Joel, Johnson v Joel* [1936] 2 All ER 962.

3 See PARA 950 note 13 ante.

4 *Bouch v Sproule* (1887) 12 App Cas 385 at 398, HL.

5 *Re Alsbury, Sugden v Alsbury* (1890) 45 ChD 237; *Re Thomas, Andrew v Thomas* [1916] 2 Ch 331, CA. As to reserve funds see COMPANIES vol 15 (2009) PARA 1413.

6 *Re Bates, Mountain v Bates* [1928] Ch 682.

7 *Bouch v Sproule* (1887) 12 App Cas 385 at 401, HL; *Re Lord Alfred Paget, Listowel v Paget* (1892) 9 TLR 88. Cf para 951 note 1 ante.

8 *Re Lord Alfred Paget, Listowel v Paget* (1892) 9 TLR 88. Cf *Re Duff's Settlements, National Provincial Bank Ltd v Gregson* [1951] Ch 923, [1951] 2 All ER 534, CA (distribution of sums from share premium account). See also PARA 950 ante.

9 *Re Piercy, Whitwham v Piercy* [1907] 1 Ch 289.

10 *Bouch v Sproule* (1887) 12 App Cas 385, HL; *Re Despard, Hancock v Despard* (1901) 17 TLR 478; *Blyth's Trustees v Milne* 1905 7 F (Ct of Sess) 799; *Re Evans, Jones v Evans* [1913] 1 Ch 23; *Re Hatton, Hockin v Hatton*

[1917] 1 Ch 357; *Re Taylor, Waters v Taylor* [1926] Ch 923; *IRC v Wright* [1927] 1 KB 333, CA. See also PARA 951 note 2 ante. See further COMPANIES vol 15 (2009) PARA 1408 et seq.

11 *Re Northage, Ellis v Barfield* (1891) 60 LJ Ch 488; *Re Tindal* (1892) 9 TLR 24; *Re Hume Nisbet's Settlement* (1911) 27 TLR 461. See also *Rowley v Unwin* (1855) 2 K & J 138.

12 *Re Mittam's Settlement Trusts* (1858) 4 Jur NS 1077. Cf *Plunkett v Mansfield* (1845) 2 Jo & Lat 344. The court may decide as a question of construction that bonuses paid out of current profits are not within a proviso in the settlement for the capitalisation of bonuses: *Hollis v Allan* (1866) 14 WR 980; *Re Baker, Ruddock v Baker* (1891) 8 TLR 7. In *Re Speir, Holt v Speir* [1924] 1 Ch 359, CA, it was held that a trust to pay the 'dividends, bonuses and income' of settled shares to a tenant for life did not cover a capital bonus. Cf *Re Wright's Settlement Trusts, Wright v Wright* [1945] Ch 211, [1945] 1 All ER 587.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(ii) Particular Receipts/953. Options to take shares.

953. Options to take shares.

Unless a settlement contains an express clause authorising the trustees to relinquish in favour of the tenant for life any preferential right to take new shares in a company that may accrue to them in respect of settled shares, they must exercise their option to take new shares on behalf of all their beneficiaries, and such new shares or any money received by sale of the option or the shares are capital¹. If the calls on the new shares are paid out of income, the tenant for life has a lien on them for the amount so paid².

1 *Rowley v Unwin* (1855) 2 K & J 138; *Re Bromley, Sanders v Bromley* (1886) 55 LT 145; *Re Curtis, Hawes v Curtis* (1885) 1 TLR 332; *Re Malam, Malam v Hitchens* [1894] 3 Ch 578 at 586-587. See also the Trustee Act 1925 s 10(3)(bb) (as added), (4). As to options to take shares see COMPANIES vol 15 (2009) PARA 1153.

2 *Rowley v Unwin* (1855) 2 K & J 138. If money is advanced by the tenant for life, at the request of the trustees, for payment of calls or shares, he has a lien on the shares for the repayment of the amount advanced with interest: *Todd v Moorhouse* (1874) LR 19 Eq 69. See further LIEN vol 68 (2008) PARA 872.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(ii) Particular Receipts/954. Directors' fees accounted for by trustees.

954. Directors' fees accounted for by trustees.

Where trustees are accountable to the trust for remuneration as directors of a company in which they hold shares subject to the trust, as they are where their appointment as directors was procured by virtue of the settled shares¹, and they are not exempted from liability to account by the terms of the settlement², the sums accounted for are capital and not income³.

1 *Re Francis, Barrett v Fisher* (1905) 74 LJ Ch 198; *Re Macadam, Dallow v Codd* [1946] Ch 73, [1945] 2 All ER 664. It is otherwise where the remuneration is received by the trustee independently of any use made by him of the trust holding: *Re Dover Coalfield Extension Ltd* [1908] 1 Ch 65, CA, as explained in *Re Gee, Wood v Staples* [1948] Ch 284, [1948] 1 All ER 498. See further TRUSTS vol 48 (2007 Reissue) PARA 928.

2 Cf *Re Llewellyn's Will Trusts, Griffiths v Wilcox* [1949] Ch 225, [1949] 1 All ER 487.

3 *Re Francis, Barrett v Fisher* (1905) 74 LJ Ch 198.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(ii) Particular Receipts/955. Partnerships.

955. Partnerships.

If a share in a partnership business is settled, or if settled funds are properly employed in a partnership business, the question what is income and what is capital must be determined by the articles of partnership, and all that is divided between the partners as profit goes to the tenant for life¹. What is properly retained as capital in the business is treated as capital, and belongs to the remainderman, only the interest on it being payable to the tenant for life². Where a tenant for life is entitled to the profits arising from a business carried on by the trustees, they may be justified in deducting a reasonable and proper annual sum for depreciation³.

1 *Stroud v Gwyer* (1860) 28 Beav 130; *Browne v Collins* (1871) LR 12 Eq 586; *Gow v Forster* (1884) 26 ChD 672; *Re Robbins, Midland Bank Executor and Trustee Co Ltd v Melville* [1941] Ch 434, [1941] 2 All ER 601. As to shares in partnerships see PARTNERSHIP vol 79 (2008) PARA 122 et seq.

2 *Stroud v Gwyer* (1860) 28 Beav 130; *Straker v Wilson* (1871) 6 Ch App 503; *Re Robbins, Midland Bank Executor and Trustee Co Ltd v Melville* [1941] Ch 434, [1941] 2 All ER 601.

3 *Re Crabtree, Thomas v Crabtree* (1911) 106 LT 49, CA.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(1) INCOME AND CAPITAL RECEIPTS/(ii) Particular Receipts/956. Right to emblems.

956. Right to emblems.

Where a tenant for life has sown the land for crops which usually repay the sowing within the year, and dies before he has obtained the advantage of his expense and labour, his personal representatives are entitled to take the crops as emblems¹. However, he is not entitled to emblems if his estate determines in his lifetime by his own act².

1 Co Litt 55b. The sowing must be by or at the expense of the tenant for life himself: *Grantham v Hawley* (1615) Hob 132; 9 Vin Abr 369, Emblems (17). As to emblems generally see AGRICULTURAL LAND vol 1 (2008) PARA 369; EXECUTORS AND ADMINISTRATORS.

2 Eg where a widow, who holds during widowhood, remarries: *Oland's Case* (1602) 5 Co Rep 116a, Co Litt 55b.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(2) APPORTIONMENT IN RESPECT OF TIME/957. In general.

(2) APPORTIONMENT IN RESPECT OF TIME

957. In general.

Unless the settlement expressly stipulates¹ that no apportionment is to take place², all rents, annuities, dividends and other periodical payments in the nature of income are considered as accruing from day to day, and on the cesser of the interest of the tenant for life by death or otherwise³ are apportionable accordingly⁴ between him or his personal representatives and the remainderman⁵.

Accordingly, whenever there are periodical payments accruing when the event calling for apportionment occurs, the Apportionment Act 1870⁶ must be applied, and when subsequently the accruing payments become due they must be distributed accordingly, the portion attributable to the period before the death of a tenant for life being payable to his estate⁷. Moreover, if an investment on which a dividend is so accruing is transferred by trustees to a person absolutely entitled before the dividend is paid, the estate of the deceased tenant for life still remains entitled to the portion accruing prior to his death, and some arrangement should be made to secure payment to the estate of that amount⁸.

1 It seems that the express stipulation must be found in the will or other instrument of gift: *Re Oppenheimer, Oppenheimer v Boatman*[1907] 1 Ch 399.

2 See the Apportionment Act 1870 s 7; and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 840. There must either be an express direction against apportionment or terms of gifts so clear as necessarily to exclude apportionment; an inference to be collected from the general terms of the will is not sufficient (*Tyrrell v Clark* (1854) 2 Drew 86, decided on similar language in the Apportionment Act 1834 s 3 (repealed)); and neither is a clause drafted with reference to the rule in *Howe v Earl of Dartmouth, Howe v Countess of Aylesbury* (1802) 7 Ves 137 (see PARA 945 note 1 ante), and plainly directed only to the exclusion of that rule (see *Re Edwards, Newbery v Edwards*[1918] 1 Ch 142). For examples of 'express stipulations' see *Re Duke of Cleveland's Estate, Viscount Wolmer v Forester*[1894] 1 Ch 164, CA; *Re Lysaght, Lysaght v Lysaght*[1898] 1 Ch 115, CA; *Re Meredith, Stone v Meredith* (1898) 67 LJ Ch 409; *Macpherson's Trustees v Macpherson* 1907 SC 1067; *Re Jenkins, Williams v Jenkins*[1915] 1 Ch 46.

3 *Re Jenkins, Williams v Jenkins*[1915] 1 Ch 46. Income applicable under the Trustee Act 1925 s 31 (see PARA 667 ante; and CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 63 et seq) for the benefit of a class is apportionable on an increase in that class, unless the settlement excludes such apportionment: *Re Joel's Will Trusts, Rogerson v Brudenell-Bruce*[1967] Ch 14, [1966] 2 All ER 482.

4 See the Apportionment Act 1870 s 2; and RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 839. As to the sums liable to apportionment see PARA 958 post. Interest payable under what is now the Town and Country Planning Act 1990 on compensation for depreciation of land values (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) PARA 914 et seq) is not apportionable: *Re Sneyd, Robertson-MacDonald v Sneyd*[1961] 1 All ER 744, [1961] 1 WLR 575. The apportionment of income involves an apportionment of outgoings in regard to that income: *Re Joel's Will Trusts, Rogerson v Brudenell-Bruce*[1967] Ch 14, [1966] 2 All ER 482.

5 *Re Clines' Estate*(1874) LR 18 Eq 213; *Pollock v Pollock*(1874) LR 18 Eq 329.

6 See PARA 958 post.

7 *Re Muirhead, Muirhead v Hill*[1916] 2 Ch 181 at 186; *Re Henderson, Public Trustee v Reddie*[1940] Ch 368 at 375, [1940] 1 All ER 623 at 626-627 per Morton J; *Re Winder's Will Trust, Westminster Bank Ltd v Fausset*[1951] Ch 916 at 921, [1951] 2 All ER 362 at 366 per Romer J. See also *Pollock v Pollock*(1874) LR 18 Eq 329.

8 *Re Henderson, Public Trustee v Reddie*[1940] Ch 368 at 378, [1940] 1 All ER 623 at 628 per Morton J.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(2) APPORTIONMENT IN RESPECT OF TIME/958. Sums liable to apportionment.

958. Sums liable to apportionment.

Apportionment by virtue of the Apportionment Act 1870¹ takes place in respect of all rents², which includes rent service, rentcharge and rent seck, and all periodical payments or renderings in lieu of or in the nature of rent³. Apportionment also takes place in respect of annuities, which includes salaries or pensions⁴, dividends on stock⁵ and all payments made by the name of dividend, bonus or otherwise out of the revenue of trading or other public companies⁶, whether such payments are usually made or declared at any fixed times or otherwise⁷. However, a payment will not be apportionable unless it is declared or expressed to be made for or in respect of some definite period⁸.

Profits arising from a private trading partnership⁹ or a newspaper carried on by trustees¹⁰ are not apportionable. There is no apportionment in respect of any sum duly or properly paid or accruing due before the happening of the event which is said to require the apportionment¹¹. Annual sums made payable on policies of assurance of any description are not apportionable¹².

1 See REAL PROPERTY vol 39(2) (Reissue) PARA 839 et seq. As to the apportionment of rent as between landlord and tenant see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 278. As to the apportionment of inheritance tax and interest on it as between life tenant and remainderman see INHERITANCE TAXATION vol 24 (Reissue) PARA 634 et seq.

2 *Roseingrave v Burke* (1873) IR 7 Eq 186; *Capron v Capron* (1874) LR 17 Eq 288.

3 See the Apportionment Act 1870 s 5; and EXECUTORS AND ADMINISTRATORS. As to rents see REAL PROPERTY vol 39(2) (Reissue) PARA 755. In the Apportionment Act 1870, 'rents' includes tithes and all periodical payments or renderings in lieu of or in the nature of a tithe (see s 5), but 'tithe rentcharge', as defined in the Tithe Act 1936 s 47(1) was extinguished by s 1: see ECCLESIASTICAL LAW.

4 See the Apportionment Act 1870 s 5; and EXECUTORS AND ADMINISTRATORS.

5 *Pollock v Pollock* (1874) LR 18 Eq 329.

6 See *Re White, Theobald v White* [1913] 1 Ch 231.

7 See the Apportionment Act 1870 s 5. 'Dividends' includes (besides dividends strictly so called) all payments made by the name of dividend, bonus or otherwise out of the revenue of trading or other public companies, divisible between all or any of the members of such respective companies, whether such payments are usually made or declared, at any fixed times or otherwise, and all such divisible revenue is deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the same revenue is declared or expressed to be made, but 'dividend' does not include payments in the nature of a return or reimbursement of capital: Apportionment Act 1870 s 5. See also *Re Griffith, Carr v Griffith* (1879) 12 ChD 655; *Re Lysaght, Lysaght v Lysaght* [1898] 1 Ch 115, CA.

8 *Re Jowitt, Jowitt v Keeling* [1922] 2 Ch 442.

9 *Jones v Ogle* (1872) 8 Ch App 192. Cf *Andrew's Trustees v Hallett* 1926 SC 1087. Partnership profits are deemed to have accrued at the end of the relevant accounting period. Accordingly, where executors continue a partnership at the direction of the testator, the tenant for life is entitled to the whole of the profits for an accounting period partly before and partly after the testator's death, but any withdrawn profits for a period wholly before the death are capital unless the will otherwise provides: *Re Robbins, Midland Bank Executor and Trustee Co Ltd v Melville* [1941] Ch 434, [1941] 2 All ER 601. See also PARTNERSHIP vol 79 (2008) PARA 133.

10 *Re Cox's Trusts* (1878) 9 ChD 159.

11 *Trevalion v Anderton* (1897) 66 LJQB 489, CA; *Ellis v Rowbotham* [1900] 1 QB 740 at 744, CA. On this principle, income payable to a testator before his death forms capital of his estate without apportionment as

between tenant for life and remainderman, although income payable on the date of his death is apportionable:
Re Aspinall, Aspinall v Aspinall [1961] Ch 526, [1961] 2 All ER 751.

12 Apportionment Act 1870 s 6.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(2) APPORTIONMENT IN RESPECT OF TIME/959. Sale and purchase of investments.

959. Sale and purchase of investments.

As a general rule, on a sale of investments, whether for purposes of reinvestment or distribution, the court declines to make any apportionment between the tenant for life and the remainderman of the proceeds of sale on account of income accrued but not payable at the time of sale, in as much as to do otherwise would be to impose a heavy burden on trustees¹. This rule is not affected by the Apportionment Act 1870, and is applied in cases where the tenant for life has died between the last payment of income and the sale². However, apportionment has been allowed in special circumstances, for instance where the sale has been by order of the court for the benefit of the estate, or to facilitate distribution among the beneficiaries³. If a purchase of stock carries with it the right to receive dividends which have been earned and declared but not paid, there is no question of apportionment, and the tenant for life is not entitled to be paid by the trustees the amount of such dividends⁴.

1 *Scholefield v Redfern* (1863) 2 Drew & Sm 173; *Freeman v Whitbread* (1865) LR 1 Eq 266. See also *Re Maclarens Settlement Trusts, Royal Exchange Assurance v Maclarens* [1951] 2 All ER 414.

2 *Bulkeley v Stephens* [1896] 2 Ch 241; *Re Firth, Sykes v Ball* [1938] Ch 517, [1938] 2 All ER 217. As to the provisions of the Apportionment Act 1870 see PARAS 957-958 ante.

3 *Bulkeley v Stephens* (1863) 3 New Rep 105; *Bulkeley v Stephens* [1896] 2 Ch 241; *Re Winterstoke's Will Trusts, Gunn v Richardson* [1938] Ch 158, [1937] 4 All ER 63. See also *Lord Londesborough v Somerville* (1854) 19 Beav 295; *Re Henderson, Public Trustee v Reddie* [1940] Ch 368 at 382, [1940] 1 All ER 623 at 631 per Morton J. The fact that the amount of the income is known or is easily ascertainable is not sufficient to entitle the court to depart from the rule: *Re Walker, Walker v Patterson* [1934] WN 104; *Re Firth, Sykes v Ball* [1938] Ch 517, [1938] 2 All ER 217; *Re Henderson, Public Trustee v Reddie* supra at 382 and 631 per Morton J.

4 *Re Peel's Settled Estates* [1910] 1 Ch 389. As to the right to receive dividends see COMPANIES vol 15 (2009) PARA 1409.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(2) APPORTIONMENT IN RESPECT OF TIME/960. Payment or recovery of apportioned parts.

960. Payment or recovery of apportioned parts.

An apportioned part of any continuing rent, annuity, dividend¹ or other payment is payable or recoverable when the entire portion of which such apportioned part forms part becomes due or payable, and not before, and in the case of a rent, annuity or other payment determined by re-entry, death or otherwise, when the next entire portion of the same would have been payable, if it had not so determined, and not before².

The personal representatives of the tenant for life have the same remedies for recovering apportioned parts as they would have had for recovering the entire portions if entitled to them, except that entire or continuing rents, including the apportioned parts, must be recovered by the person who, if the rent had not been apportionable, would have been entitled to the entire or continuing rent, and the apportioned part is recoverable from that person by the executors or other person entitled to it³.

1 For the meaning of 'rent' see PARA 958 text and note 3 ante; for the meaning of 'annuities' see PARA 958 text and note 4 ante; and for the meaning of 'dividends' see PARA 958 note 7 ante.

2 Apportionment Act 1870 s 3. As to the recovery of apportioned parts of rents and annuities see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 278 et seq; RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 839 et seq. As to the time of day when an instalment of rent becomes payable see *Re Aspinall, Aspinall v Aspinall* [1961] Ch 526, [1961] 2 All ER 751; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 259.

3 See the Apportionment Act 1870 s 4; and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 278.

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(3) ADJUSTMENT OF BURDENS BETWEEN CAPITAL AND INCOME

(i) Outgoings

961. Outgoings payable out of income.

In the absence of an express direction by a settlor to the contrary, it is presumed that the settled property is intended to descend intact. Income must, therefore, bear all ordinary outgoings of a recurrent nature in respect of the property¹, such as rates and taxes², the interest on charges and incumbrances on the property³, any fee farm rents and quit rents to which the property is subject⁴, rents reserved by the leases under which settled leaseholds are held⁵, and the expense of performing and observing all continuing obligations, covenants and conditions on the part of the lessee⁶, the cost of insurance effected by trustees⁷, and the costs of ordinary repairs⁸. The tenant for life must also bear the costs of legal proceedings for his sole benefit in respect of his life interest, such as the costs of an application by the tenant for life of a fund which has been paid into court⁹, including the costs of the trustees if it is necessary for them to appear¹⁰, the costs of an application in an administration action for payment of income¹¹, the costs of an application to change investments in order to increase income¹², the costs of rendering an income account unnecessarily demanded by a tenant for life in an administration action¹³, the costs of a reference to inquire whether a tenant for life is capable of managing his own affairs where his income would be reduced if he were found incapable¹⁴ and the expenses of a receiver of the rents¹⁵, and the costs of an application to be let into possession of land settled on trust for sale¹⁶.

1 *Fountaine v Pellet* (1791) 1 Ves 337 at 342; *Shore v Shore* (1859) 4 Drew 501; *Re Copland's Settlement, Johns v Carden*[1900] 1 Ch 326. Compensation to an outgoing tenant under a covenant in his lease has been held to be a current expense: *Mansel v Norton*(1883) 22 ChD 769, CA. However, as to such compensation in the case of an agricultural tenant see PARA 808 ante; and AGRICULTURAL LAND vol 1 (2008) PARA 425 et seq.

2 *Fountaine v Pellet* (1791) 1 Ves 337 at 342; *Kingham v Kingham*[1897] 1 IR 170; *Re Redding, Thompson v Redding*[1897] 1 Ch 876. Where the real value of property could only be ascertained and its real benefit enjoyed by means of a sale, the tenant for life was held entitled to the income of the proceeds of sale without contributing to the charges accrued since the life interest came into possession: see *Earl of Lonsdale v Countess Berchtoldt* (1857) 3 K & J 185. The deductions from rent which the tenants of licensed houses were entitled to make under the Licensing Act 1964 s 17(4) (repealed) in respect of charges imposed by that Act were annual outgoings, and not charges to be paid out of capital (see *Re Smith, Smith v Dodsworth*[1906] 1 Ch 799), but it would seem that payments of monopoly value under the Licensing Act 1953 s 6(1) (repealed), even if made by annual instalments, had to be borne by capital (*Appenrodt v Central Middlesex Assessment Committee*[1937] 2 KB 48, CA). The tenant for life must bear tithe redemption annuities: see *Re Leicester's Settled Estates, Coke v Earl of Leicester*[1939] Ch 77, [1938] 3 All ER 553; and ECCLESIASTICAL LAW.

3 *Revel v Watkinson* (1748) 1 Ves Sen 93; *Whitbread v Smith* (1854) 3 De GM & G 727 at 741; *Marshall v Crowther*(1874) 2 ChD 199; *Re Harrison, Townson v Harrison*(1889) 43 ChD 55; *Honywood v Honywood*[1902] 1 Ch 347.

4 As to fee farm rents and quit rents see REAL PROPERTY vol 39(2) (Reissue) PARA 84.

5 *Kingham v Kingham*[1897] 1 IR 170; *Redding, Thompson v Redding*[1897] 1 Ch 876; *Re Betty, Betty v A-G*[1899] 1 Ch 821; *Re Gjers, Cooper v Gjers*[1899] 2 Ch 54. The same rule applies in the case of unsaleable leaseholds included in a residuary estate, and any loss must be borne by the tenant for life (*Allen v Embleton* (1858) 4 Drew 226; *Re Owen, Slater v Owen*[1912] 1 Ch 519) but, in the case of leaseholds settled by will, the liability of the tenant for life does not commence until he has been put by the executors into possession of the income, and any outgoings incurred before then must be apportioned between capital and income on the

principle of *Allhusen v Whittle*(1867) LR 4 Eq 295: see *Re Shee, Taylor v Stoger*[1934] Ch 345. See also *Earl Lonsdale v Countess Berchtoldt* (1857) 3 K & J 185, where a tenant for life had refused to take possession of specifically bequeathed leaseholds, and the ground rent and outgoings were ordered to be paid out of capital.

6 See PARA 774 ante.

7 As to the power of trustees to insure see the Trustee Act 1925 s 19 (as amended); and TRUSTS vol 48 (2007 Reissue) PARA 1047. See also PARA 904 ante. As to insurance see further PARA 774 ante.

8 As to the cost of repairs see PARA 963 post; and as to the apportionment of outgoings in regard to income which is apportioned see PARA 957 note 4 ante.

9 *Ingram's Trust* (1854) 2 WR 679; *Re -- (a lunatic)* (1860) 8 WR 333; *Re Marner's Trusts*(1866) LR 3 Eq 432; *Re Whittion's Trusts*(1869) LR 8 Eq 352; *Re Smith's Trusts*(1870) LR 9 Eq 374; *Re Evans' Trusts*(1872) 7 Ch App 609; *Re T--* (1880) 15 ChD 78. As to payment into court under the Trustee Act 1925 s 63 (as amended) see TRUSTS vol 48 (2007 Reissue) PARA 917.

10 *Re Evans' Trusts*(1872) 7 Ch App 609.

11 *Eady v Watson* (1864) 12 WR 682. See, however, *Scrivener v Smith*(1869) LR 8 Eq 310; *Longuet v Hockley* (1870) 22 LT 198.

12 *Equitable Reversionary Interest Society v Fuller* (1861) 1 John & H 379 (on appeal 30 LJ Ch 848); *Re Tennant*(1889) 40 ChD 594.

13 *Croggan v Allen*(1882) 22 ChD 101.

14 *Winthrop v Winthrop* (1846) 15 LJ Ch 403.

15 *Bainbridge v Blair* (1835) 4 LJ Ch 207; *Shore v Shore* (1859) 4 Drew 501.

16 *Re Bagot's Settlement, Bagot v Kittoe*[1894] 1 Ch 177; *Re Newen, Newen v Barnes*[1894] 2 Ch 297. As to the costs of remaindermen see *Re Hunt, Pollard v Geake* [1900] WN 65 (on appeal [1901] WN 144, CA). Cf *Re Newen, Newen v Barnes* supra at 309.

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962. Capital outgoings.

The corpus of a trust estate must be resorted to for all costs, charges and expenses properly incurred for the benefit of the whole estate, such as the costs of carrying into execution the trusts of a will¹; the premiums on insurance policies forming part of the settled property²; the costs of legal proceedings for the administration and protection of the whole estate³, such as the costs of paying the trust fund into court⁴ and of actions by the trustees for the protection of the estate⁵; the costs of a yearly audit and stocktaking where capital is left in a business⁶; and the costs of appointing new trustees⁷. The costs of proceedings for the administration and protection of the settled property are payable out of capital even where they are incurred by the tenant for life primarily for his own benefit, as where he applies to the court to decide questions as to the proper investment of trust funds⁸, brings a redemption action⁹, incurs costs in settling a foreclosure action brought by the mortgagees¹⁰, or defends an action by a purchaser to recover a deposit¹¹. Where the sole question is one of apportionment between the tenant for life and the remainderman, however, the costs may also be apportioned¹².

Costs which ought to be borne by capital may be retained out of income by the trustees until they can be raised out of capital¹³, but the tenant for life is entitled to have such costs defrayed by an immediate sale¹⁴.

1 *Bainbridge v Blair* (1835) 4 LJ Ch 207.

2 *Macdonald v Irvine* (1878) 8 ChD 101, CA; *Re Sherry, Sherry v Sherry* [1913] 2 Ch 508. Cf *Re Jones' Settlement, Stunt v Jones* [1915] 1 Ch 373, where a tenant for life was held not entitled to be repaid premiums paid voluntarily and without any request by the trustees.

3 *Re Earl De La Warr's Estates* (1881) 16 ChD 587.

4 *Re Staples' Settlement* (1849) 13 Jur 273; *Ingram's Trust* (1854) 2 WR 679; *Re Whitton's Trusts* (1869) LR 8 Eq 352.

5 *Stott v Milne* (1884) 25 ChD 710, CA; *Re Ormrod's Settled Estate* [1892] 2 Ch 318; *Re Blake (a lunatic)* (1895) 72 LT 280. Expenses incurred by trustees in compelling lessees of settled land to perform their covenants to repair have, however, been directed to be raised by mortgage of the settled land, so that the tenant for life and the remainderman should bear them in fair proportion: *Re McClure's Trusts, Carr v Commercial Union Insurance Co* (1906) 76 LJ Ch 52. As to the costs of legal proceedings for the protection of the settled land see PARA 825 ante.

6 *Re Bennett, Jones v Bennett* [1896] 1 Ch 778, CA.

7 *Re Fulham (a lunatic)* (1850) 15 Jur 69; *Ex p Davies* (1852) 16 Jur 882; *Lord Brougham v Lord Poulett* (1855) 19 Beav 119 at 135; *Re Fellows' Settlement* (1856) 2 Jur NS 62; *Carter v Sebright* (1859) 26 Beav 374 at 377; *Harvey v Olliver* [1887] WN 149. Where the settlor has appointed a single trustee, the costs of appointing an additional trustee are payable out of corpus (*Re Ratcliff* [1898] 2 Ch 352; but see *Finlay v Howard* (1842) 2 Dr & War 490; *Re Brackenbury's Trusts* (1870) LR 10 Eq 45); and where trustees rightly retired in consequence of the acts of the tenant for life, the costs were directed to be paid out of income (*Coventry v Coventry* (1837) 1 Keen 758). See also TRUSTS vol 48 (2007 Reissue) PARA 890.

8 *Beauclerk v Ashburnham* (1845) 8 Beav 322; *Hume v Richardson* (1862) 31 LJ Ch 713.

9 *Colyer v Colyer, Pawley v Colyer* (1863) 3 De GJ & Sm 676.

10 *More v More* (1889) 37 WR 414. See also *Selby v Selby* (1838) 2 Jur 106.

11 *Re Foster's Settled Estates* [1922] 1 Ch 348. See also PARA 823 ante.

12 *Reeves v Creswick* (1839) 3 Y & C Ex 715; *Re Earl of Chesterfield's Trusts* (1883) 24 ChD 643 at 654.

13 *Stott v Milne* (1884) 25 ChD 710, CA. See also TRUSTS vol 48 (2007 Reissue) PARA 748.

14 *Burkett v Spray* (1829) 1 Russ & M 113. As to the recovery by the tenant for life of costs incurred on a compulsory purchase under the Lands Clauses Consolidation Act 1845 see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 683.

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963. Cost of repairs.

Casual repairs effected by trustees should usually be paid out of income¹. The trustees may pay for any repairs out of income, and if they do so the court will not interfere with their discretion². However, if they think the repairs are such that they should not be paid for out of income, the trustees may apply to the court for a direction for payment out of capital³. Repairs amounting to structural reconstruction⁴ and permanent improvements⁵ should generally be borne by capital⁶.

1 *Re Smith, Vincent v Smith* [1930] 1 Ch 88; *Re Earl of Berkeley, Inglis v Countess of Berkeley* [1968] Ch 744, [1968] 3 All ER 364, CA. As to repairs of improvements see PARA 964 post. As to the court's power to sanction payment out of capital in special circumstances see PARA 671 ante. As to the management powers of trustees see PARAS 665-666 ante. As to whether a tenant for life is bound to repair see PARAS 995-996 post.

2 *Re Gray, Public Trustee v Woodhouse* [1927] 1 Ch 242.

3 *Re Jackson, Jackson v Talbot* (1882) 21 ChD 786; *Re Robins, Holland v Gillam* [1928] Ch 721.

4 *Re Whitaker, Rooke v Whitaker* [1929] 1 Ch 662.

5 *Re Conquest, Royal Exchange Assurance v Conquest* [1929] 2 Ch 353; *Re Smith, Vincent v Smith* [1930] 1 Ch 88.

6 *Re Hotchkys, Freke v Calmady* (1886) 32 ChD 408, CA; *Re Robins, Holland v Gillam* [1928] Ch 721 at 737; *Re Conquest, Royal Exchange Assurance v Conquest* [1929] 2 Ch 353; *Re Howlett, Howlett v Howlett* [1949] Ch 767, [1949] 2 All ER 490. See further TRUSTS vol 48 (2007 Reissue) PARA 942. As to expenditure of capital money on authorised improvements under the Settled Land Act 1925 see PARA 809 et seq ante. Where trustees of a settlement exercise their powers of management under s 102 (as amended) (see PARAS 665-666 ante), or trustees of land exercise such powers (see PARA 903 ante), repairs in the nature of permanent improvements may be directed to be borne out of capital, even if not authorised improvements under the Settled Land Act 1925: *Re Robins, Holland v Gillam* supra; *Re Smith, Vincent v Smith* [1930] 1 Ch 88.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(3) ADJUSTMENT OF BURDENS BETWEEN CAPITAL AND INCOME/(i) Outgoings/964. Maintenance, repair and insurance of improvements.

964. Maintenance, repair and insurance of improvements.

Improvements¹ must be maintained and repaired and, if they include a building or work in its nature insurable against damage by fire, insured, at the expense of the tenant for life² and each of his successors in title having under the trust instrument³ a limited interest only in the settled land⁴, for such period, if any, and in such amount, if any, as the Minister of Agriculture, Fisheries and Food prescribes by certificate in any case⁵. The tenant for life and each of his successors in title is also bound from time to time, if required by the Minister on or without the application of any person having under the settlement any estate or interest in the settled land in possession, remainder or otherwise, to report to the Minister the state of every improvement and the fact and particulars of any fire insurance⁶. Failure to comply with these requirements gives any person having any estate or interest in the settled land, in possession, remainder or reversion, under the trust instrument, a right to an action for damages against the tenant for life or his estate after his death⁷. The tenant for life and each of his successors in title having under the trust instrument a limited interest only in the settled land is protected, in executing, repairing or maintaining authorised improvements, against liability for waste in respect of any acts, works or user of the land for such purposes⁸. However, the tenant for life or his successors in title are not authorised to cut down and use timber and other trees planted or left standing for shelter or ornament⁹, and he and they are prohibited from cutting down, except in proper thinning, any trees planted as an authorised improvement¹⁰.

1 Improvements authorised under the Settled Land Act 1925 or the enactments replaced by it: see PARA 815 et seq ante.

2 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

3 For the meaning of 'trust instrument' see PARA 688 note 7 ante.

4 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

5 Settled Land Act 1925 ss 88(1), 117(1)(xvi) (amended by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554). As to the minister's powers see PARA 965 post. As to the Minister of Agriculture, Fisheries and Food generally see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 435 et seq. As to the insurance money see PARAS 774, 802 ante. The certificate may be varied from time to time, but not so as to increase the liability of the tenant for life or any of his successors in title: see the Settled Land Act 1925 s 88(4).

Every certificate and report approved and made by the Minister under the Settled Land Act 1925 must be filed in the office of the Minister of Agriculture, Fisheries and Food, and an office copy of any certificate or report so filed must be delivered out of such office to any person requiring the same, on payment of the proper fee, and is sufficient evidence of the certificate or report of which it purports to be a copy: s 116 (amended by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554).

6 Settled Land Act 1925 s 88(3).

7 See ibid s 88(5).

8 See ibid s 89; and PARA 794 ante. As to liability for waste see PARA 986 et seq post.

9 See ibid s 89. As to cutting timber see PARAS 848 ante, 988 et seq post. It is for the court to determine whether timber has been planted or left for shelter or ornament, but the question is not determined by saying whether in the opinion of the court the timber is ornamental or not; if the timber has been planted or left by the owners of the estate for the time being for shelter or for ornament, it is protected even though the opinion may be that it is not in fact ornamental: *Weld-Blundell v Wolseley* [1903] 2 Ch 664.

10 See the Settled Land Act 1925 s 88(2). Planting is an authorised improvement: see s 83, Sch 3 Pt I para (x); and PARA 816 head (10) ante. The prohibition is not limited to timber trees. It is unclear whether, if timber has been planted as an authorised improvement, this prohibition would prevent the exercise by a tenant for life of his right to cut ripe timber under s 66: see PARA 848 ante. As to the powers of limited owners to enter into a forestry dedication covenant see PARA 867 ante; and FORESTRY vol 52 (2009) PARA 119.

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965. Extension of the minister's powers.

For the purposes of any Act, public general, local or private, making provision for the execution of improvements on settled land¹, the Minister of Agriculture, Fisheries and Food has all such powers and authorities as he has for the purposes of the Improvement of Land Act 1864². The provisions of that Act relating to proceedings and inquiries, and to authentication of instruments and to declarations, statements, notices, applications, forms, security for expenses, inspections and examinations extend and apply, as far as the nature and circumstances of the case admit, to acts and proceedings done or taken by or in relation to the Minister under any Act making provision for the execution of improvements on settled land³. The provisions of any Act relating to security for costs in respect of business transacted under the Acts administered by the Minister as successor of the Land Commissioners for England extend and apply to the business transacted by or under the direction of the Minister under any Act, public general, or local or private, by which any power or duty is conferred or imposed on him as such successor⁴.

1 For the meaning of 'settled land' see PARA 680 text to note 2 ante.

2 Settled Land Act 1925 ss 115(1), 117(1)(xvi) (amended by the Transfer of Functions (Ministry of Food) Order 1955, SI 1955/554). As to the Minister of Agriculture, Fisheries and Food see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 435-437. As to the powers of the Minister under the Improvement of Land Act 1864 see AGRICULTURAL LAND vol 1 (2008) PARA 620 et seq.

3 Settled Land Act 1925 ss 115(2), 117(1)(xvi) (as amended: see note 2 supra).

4 Ibid ss 115(3) (amended by the Agriculture (Miscellaneous Provisions) Act 1963 s 28, Schedule Pt II), 117(1)(xvi) (as amended: see note 2 supra). As to the Land Commissioners for England see COMMONS vol 13 (2009) PARA 423.

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(ii) Duty of Tenant for Life to keep down Interest and Annuities

966. Liability for incumbrances and interest on them.

Apart from any question arising on the special terms of the instrument creating the settlement, a tenant for life is under no obligation to discharge any portion of the principal of paramount incumbrances¹, but he is bound as between himself and the remainderman² to keep down the interest accruing during his lifetime to the extent of, and out of, the rents and profits received by him³. If the rents are at any time insufficient to keep down the interest, subsequent rents arising during his lifetime are applicable to liquidate arrears accruing during his own life tenancy⁴ and, if part of the property is sold, principal, interest and costs due on the mortgage being then paid off out of the proceeds, the rents of the unsold portion subsequently received by the tenant for life remain liable as between himself and the remainderman to recoup amounts paid out of capital in satisfaction of arrears of interest⁵.

1 *Lord Penrhyn v Hughes* (1799) 5 Ves 99 at 107; *Kekewich v Marker* (1851) 3 Mac & G 311 at 328.

2 The obligation does not exist as between the tenant for life and the incumbrancers: *Re Morley, Morley v Saunders*(1869) LR 8 Eq 594. See also MORTGAGE vol 77 (2010) PARA 736.

3 *Revel v Watkinson* (1748) 1 Ves Sen 93; *Amesbury v Brown* (1750) 1 Ves Sen 477 at 480; *Earl of Peterborough v Mordaunt* (1760) 1 Eden 474; *Faulkner v Daniel* (1843) 3 Hare 199 at 207. See also *Syer v Gladstone*(1885) 30 ChD 614, as explained in *Frewen v Law Life Assurance Society*[1896] 2 Ch 511 at 517. See also MORTGAGE vol 77 (2010) PARA 101 et seq.

4 *Revel v Watkinson* (1748) 1 Ves Sen 93; *Tracy v Viscountess Dowager Hereford* (1786) 2 Bro CC 128. This applies to interest on unpaid instalments of estate duty (now replaced by inheritance tax): *Re Earl Howe's Settled Estates, Earl Howe v Kingscote*[1903] 2 Ch 69, CA; *Re Earl of Egmont's Settled Estates, Lefroy v Egmont*[1912] 1 Ch 251. See also PARA 971 post.

5 *Honywood v Honywood*[1902] 1 Ch 347.

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967. Extent of obligation of tenant for life.

The obligation of the tenant for life to keep down interest applies even if there is an ultimate limitation to the tenant for life in fee¹, or if he has an absolute power of appointment, by reason of which he might make the estate his own². A purchaser of his estate, although himself the mortgagee, is bound to discharge the obligations³.

If real estate is charged by will with payment of debts, and subject to that is settled, every tenant for life must keep down all the interest upon all the debts bearing interest which are ascertained to be a charge upon the estate⁴ from the day of the testator's death⁵, and also pay all interest payable on any legacies charged on the estate⁶.

The liability of the tenant for life is not personal⁷, but is a charge on his life estate, and if he fails to keep down interest, future rents and profits payable during his tenancy for life are liable to recoup to the remainderman the full amount of his default⁸, and he is not entitled to have any portion of the settled estates sold for the purposes of paying off interest and arrears⁹. However, he may have an incumbrance paid off by sale if the rents are insufficient to keep down the interest¹⁰.

1 *Burges v Mawbey* (1823) Turn & R 167. As to the obligation of the tenant for life to keep down interest see PARA 966 ante. As to the tenant for life generally see PARA 761 et seq ante. As to limitations see PARA 715 et seq ante.

2 *Whitbread v Smith* (1854) 3 De GM & G 727 at 741. The rule applies to the case of an owner in fee with an executory devise over (*Butcher v Simmonds* (1876) 35 LT 304), or of a tenant in tail who is a child (*Sergeson v Sealey* (1742) 2 Atk 412; *Burges v Mawbey* (1823) Turn & R 167), but not to the case of an adult tenant in tail because he is in fact the owner of the estate, and has the remainderman at his mercy (*Amesbury v Brown* (1750) 1 Ves Sen 477; *Burges v Mawbey* supra at 175). However, if the tenant in tail, having kept down interest during his life, dies without barring the entail, his personal representative has no charge on the reversion for the interest: *Amesbury v Brown* supra. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

3 *Lord Penrhyn v Hughes* (1799) 5 Ves 99; *Raffety v King* (1836) 1 Keen 601.

4 *Faulkner v Daniel* (1843) 3 Hare 199; *Wastell v Leslie, Carter v Leslie* (1844) 13 LJ Ch 205; *Marshall v Crowther* (1874) 2 ChD 199. See also EXECUTORS AND ADMINISTRATORS.

5 *Barnes v Bond* (1863) 32 Beav 653; *Marshall v Crowther* (1874) 2 ChD 199, following *Allhusen v Whittell* (1867) LR 4 Eq 295, and not following *Greisley v Earl of Chesterfield* (1851) 13 Beav 288.

6 *Earl of Milltown v Trench* (1837) 4 Cl & Fin 276, HL; *Faulkner v Daniel* (1843) 3 Hare 199; *Coote v Lord Milltown* (1844) 1 Jo & Lat 501. See also EXECUTORS AND ADMINISTRATORS.

7 *Honywood v Honywood* [1902] 1 Ch 347 at 351.

8 *Waring v Coventry* (1834) 2 My & K 406; *Fitzmaurice v Murphy* (1859) 8 I Ch R 363; *Makings v Makings* (1860) 1 De GF & J 355; *Lord Kilworth v Earl of Mountcashell* (1864) 15 I Ch R 565. The remainderman's remedy is to apply to the court for the appointment of a receiver, whose costs must be borne by the tenant for life (*Shore v Shore* (1859) 4 Drew 501), and have the rents appropriated for the purpose of paying the accruing interest (*Hill v Browne* (1844) Drury temp Sug 426 at 434; *Coote v O'Reilly* (1844) 1 Jo & Lat 455 at 461; *Lord Kensington v Bouvierie* (1859) 7 HL Cas 557 at 575; *Kirwan v Kennedy* (1869) IR 3 Eq 472 at 481). See also RECEIVERS vol 39(2) (Reissue) PARA 335 et seq.

9 *Hawkins v Hawkins* (1836) 6 LJ Ch 69; *Shore v Shore* (1859) 4 Drew 501.

10 *Lord Penrhyn v Hughes* (1799) 5 Ves 99; *Cooke v Cholmondeley* (1857) 4 Drew 244.

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968. Remainderman's rights.

The remainderman is entitled to be repaid arrears of interest out of the assets of a deceased tenant for life to the extent of the rents received during the life tenancy¹, subject to any set-off there may be in respect of capital charges paid by the tenant for life². However, he is not entitled to have arrears of interest which have accrued during a previous life tenancy discharged by a subsequent tenant for life out of the rents and profits as such arrears are primarily a charge on the inheritance³, and if the subsequent tenant for life is forced to pay them they are repayable to him out of capital⁴.

1 *Baldwin v Baldwin* (1856) 6 I Ch R 156; *Re Fitzgerald's Estate* (1867) IR 1 Eq 453; *Kirwan v Kennedy* (1869) IR 3 Eq 472 at 481; *Re Gore* (1874) IR 9 Eq 83. The remainderman has not, however, a specific lien on rents collected or to be collected by a personal representative after the death of the tenant for life: *Dillon v Dillon* (1853) 4 I Ch R 102.

2 *Re Whyte* (1857) 7 I Ch R 61n; *Howlin v Sheppard* (1872) IR 6 Eq 497. As to set-off generally see CIVIL PROCEDURE vol 11 (2009) PARA 634 et seq.

3 *Caulfield v Maguire* (1845) 2 Jo & Lat 141; *Sharshaw v Gibbs* (1854) Kay 333; *Kennedy v Daley* (1858) 7 I Ch R 445.

4 *Kirwan v Kennedy* (1870) IR 4 Eq 499. However, where the tenant for life has overpaid interest by mistake, this is not recoverable out of capital: see *Kirwan v Kennedy* supra.

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969. Several estates in one settlement.

If several estates are included in the same settlement, the tenant for life is bound out of the whole rents and profits to keep down the interest on charges on all the estates¹. If a charge in respect of which arrears of interest have arisen is paid off by means of a sale of one of the estates, he remains liable to make good the arrears out of subsequent rents received by him from any of the estates².

1 *Tracy v Viscountess Dowager Hereford* (1786) 2 Bro CC 128; *Scholefield v Lockwood* (1863) 4 De GJ & Sm 22; *Frewen v Law Life Assurance Society* [1896] 2 Ch 511; *Honywood v Honywood* [1902] 1 Ch 347. See also *Re Hotchkys, Freke v Calmady* (1886) 32 ChD 408 at 418-419, CA. As to the tenant for life generally see PARA 761 et seq ante.

2 *Honywood v Honywood* [1902] 1 Ch 347.

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970. Annuities.

On a gift of real estate charged with annuities, the tenant for life is bound to keep down the annuities¹, and if he fails to do so and the estate is sold to pay the arrears, the remainderman is entitled to have the arrears recouped out of interest on the surplus of the purchase money accruing during the life tenancy². However, if the income is insufficient to pay the annuities in full and the deficiency is raised out of capital, the remainderman is not entitled to have the deficiency recouped out of future income accruing during the life tenancy³. Arrears unpaid at the death of a tenant for life become a charge upon and must be raised out of corpus, and the succeeding tenant for life is only bound to keep down the interest on them⁴.

If the annuity charged on the settled estate is a debt of the settlor, the tenant for life and the remainderman must contribute to the annuity proportionately⁵.

1 *Re Grant, Walker v Martineau* (1883) 52 L.J. Ch 552; *Re Popham, Butler v Popham* (1914) 111 LT 524. As to annuities generally see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 762 et seq.

2 *Coote v O'Reilly* (1844) 1 Jo & Lat 455.

3 *Re Croxon, Ferrers v Croxton* [1915] 2 Ch 290.

4 *Playfair v Cooper, Prince v Cooper* (1853) 17 Beav 187.

5 As to the rules for ascertaining the respective liabilities of the tenant for life and the remainderman see EXECUTORS AND ADMINISTRATORS. As to whether an annuity is payable out of the corpus or income of property charged see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARA 826 et seq.

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(iii) Discharge of Incumbrances by Tenant for Life

971. Discharge of interest.

A tenant for life in possession of an estate subject to a charge bearing interest who pays the interest, although the rents and profits are insufficient to enable him to do so, may make himself an incumbrancer¹ for the excess of his payments beyond the amount of the rents and profits, but if he pays the interest during his life without any intimation that the rents and profits are insufficient, or that he has any intention of charging the corpus of the estate with any deficiency, his personal representatives cannot after his death set up any such charge². If the charge is a continuing charge on income as well as a charge on the corpus, it is doubtful whether a tenant for life is entitled, until after the termination of his life interest, to recoupment out of the corpus in respect of a deficiency which he has made good out of his own money³.

1 See MORTGAGE vol 77 (2010) PARA 223. Cf *Fetherstone v Mitchell* (1847) 9 I Eq R 480.

2 *Dixon v Peacock* (1855) 3 Drew 288; *Lord Kensington v Bouverie* (1859) 7 HL Cas 557. See also MORTGAGE vol 77 (2010) PARAS 765, 766.

3 In *Re Warwick's Settlement Trusts, Greville Trust Co v Grey* [1937] Ch 561, [1937] 2 All ER 828, Farwell J held that a tenant for life was not entitled to recoupment until after the tenancy for life had come to an end, or at any rate until the estate had been sold. The Court of Appeal affirmed his decision on other grounds ([1938] Ch 530, [1938] 1 All ER 639, CA), but Sir Wilfrid Greene MR expressed a strong view that a tenant for life was entitled at any time to an immediate recoupment out of corpus, provided that he had shown a sufficient intention to claim a charge on corpus. However, Clauson LJ, without expressing a concluded view, appeared to agree with Farwell J.

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972. Payment off of capital charge by tenant for life.

A tenant for life who pays off a capital charge on the inheritance is *prima facie* entitled to that charge for his own benefit¹. The presumption applies equally in favour of a tenant for life in remainder², or in any case where the charge is paid off by the trustees out of rents and profits³. If successive tenants for life pay off a mortgage by instalments, the money must be repaid to them rateably in proportion to the payments made by them, and not divided among them in order of priority⁴.

1 *Countess of Shrewsbury v Earl of Shrewsbury* (1790) 1 Ves 227; *Faulkner v Daniel* (1843) 3 Hare 199 at 217; *Burrell v Earl of Egremont* (1844) 7 Beav 205 at 226; *Morley v Morley, Harland v Morley* (1855) 5 De GM & G 610; *Howlin v Sheppard* (1872) IR 6 Eq 497; *Re Godley's Estate* [1896] 1 IR 45. See also *Re Pride, Shackell v Colnett* [1891] 2 Ch 135. The rule applies where the tenant for life in exercise of a power of charging has himself created the charge which he pays off: *Re Duchess Dowager of Norfolk, ex p Earl of Digby* (1821) Jac 235; *Jenkinson v Harcourt* (1854) Kay 688. See also EQUITY vol 16(2) (Reissue) PARA 767 et seq; MORTGAGE vol 77 (2010) PARA 101 et seq.

2 *Re Chesters, Whittingham v Chesters* [1935] Ch 77.

3 *Re Harvey, Harvey v Hobday* [1896] 1 Ch 137, CA.

4 *Re Nepean's Settled Estate* [1900] 1 IR 298.

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973. Evidence of intention.

A tenant for life is under no obligation to prove his intention to pay off the charge for his own benefit¹. The simple payment of the charge by him is sufficient to establish his *prima facie* right to have the charge raised out of the estate and he is under no obligation or duty to make any declaration, or to do any act demonstrating his intention². However, in every case, what the court has to ascertain is the intention of the party paying off the charge. In the absence of direct evidence the intention must be gathered from what it was his interest to do, but any evidence to the contrary must be regarded³, and the smallest demonstration that he meant to discharge the estate is sufficient⁴. Such a demonstration may be made by his acts as well as by his words which, being against interest, are legitimate evidence even after the event⁵. The burden of proving an intention to exonerate the estate, however, lies on the remainderman⁶, and evidence drawn from recitals in a deed, or the form of reconveyance, may in its turn be rebutted by a long series of acts consistent only with an intention to keep the charge alive⁷, or by the personal evidence of the tenant for life⁸.

The fact that the tenant for life who pays off the charge and the remainderman stand in the relationship of parent and child is material if there is anything else to rebut the presumption that the tenant for life paid the charge off for his own benefit, but is not by itself sufficient to rebut it⁹.

1 *Lindsay v Earl of Wicklow* (1873) IR 7 Eq 192. As to the payment off of capital charges by the tenant for life see PARA 972 ante.

2 *Redington v Redington* (1809) 1 Ball & B 131; *Burrell v Earl of Egremont* (1844) 7 Beav 205; *Lord Kensington v Bouverie* (1859) 7 HL Cas 557 at 595; *Lindsay v Earl of Wicklow* (1873) IR 7 Eq 192; *Re Harvey, Harvey v Hobday* [1896] 1 Ch 137, CA.

3 *Pitt v Pitt* (1856) 22 Beav 294; *Williams v Williams-Wynn* (1915) 84 LJ Ch 801. For a case where there was a covenant to assign to the trustees of the settlement the benefit of charges paid off see *Cochrane v St Clair* (1855) 1 Jur NS 302.

4 *Jones v Morgan* (1783) 1 Bro CC 206 at 218; *Lord Kensington v Bouverie* (1859) 7 HL Cas 557; *Re Warwick's Settlement Trusts, Greville Trust Co v Grey* [1938] Ch 530, [1938] 1 All ER 639, CA. In the present state of the authorities, a tenant for life who wishes to keep a charge alive would be well advised to give express notice to the trustees whenever he makes a payment out of his own money.

5 *Lord Kensington v Bouverie* (1859) 7 HL Cas 557 at 574; *Conolly v Barter* [1904] 1 IR 130 at 138, Ir CA.

6 *Re Harvey, Harvey v Hobday* [1896] 1 Ch 137, CA.

7 *Lindsay v Earl of Wicklow* (1873) IR 7 Eq 192.

8 *Lord Gifford v Lord Fitzhardinge* [1899] 2 Ch 32; *Williams v Williams-Wynn* (1915) 84 LJ Ch 801. On the other hand, an assignment of a charge to a trustee for the benefit of the tenant for life has been held not to keep the charge alive in the face of evidence contained in his will that he regarded it as extinguished: *Re Lloyd's Estate* [1903] 1 IR 144. For a case where an intention to keep a charge alive was evidenced by the will see *Lysaght v Lysaght* (1851) 4 Ir Jur 110. As to proof of intention generally and hearsay evidence see CIVIL PROCEDURE vol 11 (2009) PARAS 806 et seq, 1080.

9 *Re Harvey, Harvey v Hobday* [1896] 1 Ch 137, CA. As to the presumption of advancement generally see GIFTS vol 52 (2009) PARA 244 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(3) ADJUSTMENT OF BURDENS BETWEEN CAPITAL AND INCOME/(iii) Discharge of Incumbrances by Tenant for Life/974. Extinction of charge by mistake.

974. Extinction of charge by mistake.

A tenant for life who extinguishes a charge on the estate in a mistaken belief as to his own rights is entitled on discovering his error to keep the charge alive against the inheritance¹. A vague intention of not requiring repayment, if he should find that he could conveniently do without it, does not convert the payment into a gift for the benefit of the inheritance².

1 *Burrell v Earl of Egremont* (1844) 7 Beav 205; *Conolly v Barter* [1904] 1 IR 130, Ir CA. Apart from mistake, an intention to discharge the incumbrance cannot afterwards be changed: see MORTGAGE vol 77 (2010) PARA 676. See also *Lindsay v Earl of Wicklow* (1873) IR 7 Eq 192 at 209; but see *Lysaght v Lysaght* (1851) 4 Ir Jur 110. On the question of merger generally see EQUITY vol 16(2) (Reissue) PARA 764 et seq; MORTGAGE vol 77 (2010) PARA 673 et seq; REAL PROPERTY vol 39(2) (Reissue) PARA 255 et seq. As to mistake generally see MISTAKE.

2 *Cuddon v Cuddon* (1876) 4 ChD 583.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(3) ADJUSTMENT OF BURDENS BETWEEN CAPITAL AND INCOME/(iv) Expenses of Renewing Leases/975. Renewable leaseholds.

(iv) Expenses of Renewing Leases

975. Renewable leaseholds.

After 1925, perpetually renewable leases which formerly were frequently the subject of settlements no longer exist as such but take effect as a demise for a term of 2,000 years, and perpetually renewable underleases take effect as a demise for a term less in duration by one day than the term out of which they are derived¹. Leases and underleases may, however, still contain a provision for renewal for a term not exceeding 60 years from the termination of the lease or underlease² and, if such renewable leaseholds are included in the subject matter of a settlement, the settlement should make it plain whether an imperative trust for renewal is intended to be created. A direction to renew may be couched in discretionary terms in order to avoid placing the estate and the persons interested at the mercy of the lessor, and yet impose on the trustees a trust which the court will execute if they do not³. If there is a direction to renew, whether express or implied⁴, it must be obeyed, and the persons whose duty it is to renew, whether the trustees or the tenant for life, are liable to compensate the remainderman for the loss occasioned by their default⁵, or, if he himself renews, to repay him the amount of the fine, provided that it is reasonable⁶. In the absence of a direction to renew, the mere circumstance of there being limitations over imposes no necessity on the tenant for life, and he may renew or allow the term to expire⁷. However, if a tenant for life in such circumstances chooses to renew, he is a trustee of the lease for all persons interested under the subsequent limitations, in accordance with the principle of equity that parties interested jointly with others in a lease cannot take to themselves the benefit of a renewal to the exclusion of the other parties interested with them⁸.

1 See the Law of Property Act 1922 s 145, Sch 15 paras 1(1), 2(1), 5, 6(1), 7(1); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 541-542.

2 See ibid Sch 15 para 7(2); and LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 538. As to renewable leaseholds see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 538 et seq.

3 *Viscount Milsington v Earl Mulgrave* (1818) 3 Madd 491 (subsequent proceedings *Viscount Milsington v Earl Portmore, Earl Mulgrave* (1821) 5 Madd 471); *Mortimer v Watts* (1852) 14 Beav 616.

4 *Lock v Lock* (1710) 2 Vern 666. However, the court is slow on mere inference to impose an obligation on the tenant for life to renew: *Capel v Wood* (1828) 4 Russ 500.

5 *Lord Montfort v Lord Cadogan* (1810) 17 Ves 485 (varied (1816) 19 Ves 635); *Bennett v Colley* (1833) 2 My & K 225. See also *Hulkes v Barrow* (1829) Taml 264. The trustees have a right to be recouped by the tenant for life who has received the rents and profits that ought to have made good the fine (*Lord Montfort v Lord Cadogan* supra), but where the estate of a tenant for life who neglected to renew was insolvent the loss was borne by capital and not by the tenant for life in remainder (*Wadley v Wadley* (1845) 2 Coll 11).

6 *Colegrave v Manby* (1826) 2 Russ 238.

7 *Stone v Theed* (1787) 2 Bro CC 243; *White v White* (1804) 9 Ves 554 at 561; *O'Ferrall v O'Ferrall* (1834) L & G temp Plunk 79. A tenant for life ought not, however, by surrendering a lease, to deprive himself of the option of renewing for the benefit of the parties in remainder: *Harvey v Harvey* (1842) 5 Beav 134.

8 *Taster v Marriott* (1768) Amb 668; *Rawe v Chichester* (1773) Amb 715; *Pickering v Vowles* (1783) 1 Bro CC 197; *Parker v Brooke* (1804) 9 Ves 583; *Eyre v Dolphin* (1813) 2 Ball & B 290; *Giddings v Giddings* (1827) 3 Russ 241; *Cridland v Luxton* (1834) 4 LJ Ch 65; *Waters v Bailey* (1843) 2 Y & C Ch Cas 219; *Trumper v Trumper* (1873)

8 Ch App 870; *Re Biss, Biss v Biss*[1903] 2 Ch 40 at 61, CA; *Hahesy v Guiry*[1918] 1 IR 135, Ir CA. See also *Griffith v Owen*[1907] 1 Ch 195.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(3) ADJUSTMENT OF BURDENS BETWEEN CAPITAL AND INCOME/(iv) Expenses of Renewing Leases/976. Liability for expenses of renewal.

976. Liability for expenses of renewal.

The settlement should provide how and by whom the expenses of renewal are to be raised and borne. If provision is made for raising the expenses of renewal by sale or mortgage of the estate itself, or of another estate, the tenant for life loses the rents of the part sold in the case of sale and keeps down the interest in the case of a mortgage¹. However, if there is a direction to renew leases out of rents and profits, the whole expense has to be borne by the tenant for life².

If there is no special direction in the settlement as to the raising of expenses of renewal³, or the special direction is limited in amount⁴, the expenses of renewal, or the excess of them over the limited sum, must be borne by the tenant for life and remainderman in proportion to their actual enjoyment of the renewed lease⁵. Therefore, if the tenant for life derives no benefit from the renewal, as where he dies before the expiration of the original lease, the whole expense must fall on the remainderman⁶. On the other hand, if the remainderman derives no benefit from the renewal, the estate of the tenant for life cannot make any claim in respect of the fines⁷.

1 *Plumtre v Oxenden* (1855) 25 LJ Ch 19; *Ainslie v Harcourt* (1860) 28 Beav 313; *Bradford v Brownjohn* (1868) 3 Ch App 711 at 715.

2 *Earl of Shaftesbury v Duke of Marlborough* (1833) 2 My & K 111; *Solley v Wood* (1861) 29 Beav 482. Where the custom was to renew annually and underlet, it was held that the fines upon renewal were payable out of rents and profits, and the tenant for life, undertaking to pay those fines, was entitled to the fines on renewal of the underleases: *Milles v Miles* (1802) 6 Ves 761. A direction to raise fines out of rents and profits has been held to authorise the raising of a gross sum by sale or mortgage: *Allan v Backhouse* (1813) 2 Ves & B 65.

3 If there is a power in the trustees to raise expenses of renewal either by sale or mortgage or out of rents and profits, and the trustees do not exercise their discretion, the court treats the case as one in which there is no direction binding the court: *Jones v Jones* (1846) 5 Hare 440 at 462; *Ainslie v Harcourt* (1860) 28 Beav 313. See, however, *Viscount Milsintown v Earl Portmore, Earl Mulgrave* (1821) 5 Madd 471.

4 *Plumtre v Oxenden* (1855) 25 LJ Ch 19.

5 *Nightingale v Lawson* (1785) 1 Bro CC 440; *White v White* (1804) 9 Ves 554; *Giddings v Giddings* (1827) 3 Russ 241; *Cridland v Luxton* (1834) 4 LJ Ch 65; *Jones v Jones* (1846) 5 Hare 440; *Hudleston v Whelpdale* (1852) 9 Hare 775; *Bradford v Brownjohn* (1868) 3 Ch App 711. In *Re Baring, Jeune v Baring* [1893] 1 Ch 61, Kekewich J thought that the enjoyment might properly be ascertained by actuarial valuation, but the point was not argued.

6 *Nightingale v Lawson* (1785) 1 Bro CC 440; *Adderley v Clavering* (1789) 2 Cox Eq Cas 192; *Harris v Harris (No 3)* (1863) 32 Beav 333.

7 *Lawrence v Maggs* (1759) 1 Eden 453.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(3) ADJUSTMENT OF BURDENS BETWEEN CAPITAL AND INCOME/(iv) Expenses of Renewing Leases/977. Reimbursement of tenant for life and remainderman.

977. Reimbursement of tenant for life and remainderman.

If the expenses of renewal are paid by the tenant for life, his estate has a lien upon the residue of the term for whatever ought to be paid by the remainderman in respect of the period of which the tenant for life has not had the enjoyment¹, but the tenant for life cannot require repayment of the sum advanced in his lifetime². The remainderman pays compound interest on the amount found due from him for the period down to the death of the tenant for life and simple interest from that date until payment³. If the renewal is made by or at the expense of the remainderman, or the money is raised by a mortgage of the corpus, the difficulty arises that, unless some course is taken to protect the remainderman's interest, the tenant for life may enjoy the estate during his whole life without bearing any greater charge than the interest on the debt created by the renewal, and he may have no assets to pay his proportion of the principal money. This inconvenience has been avoided by requiring the tenant for life to give security for an amount calculated upon the assumption that his life will last during a portion of the renewed lease⁴. If he dies within the time during which it is assumed his life will last, the security is void for the excess. If he outlives that time, he may be called on to give a further security to cover the additional proportion then to be attributed to him⁵, but his income cannot be impounded on account of a security that he may have to give in the future⁶.

1 *Adderley v Clavering* (1789) 2 Cox Eq Cas 192; *Jones v Jones* (1846) 5 Hare 440 at 465. See also LIEN vol 68 (2008) PARA 870 et seq.

2 *Harris v Harris (No 3)* (1863) 32 Beav 333.

3 *Nightingale v Lawson* (1785) 1 Bro CC 440; *Giddings v Giddings* (1827) 3 Russ 241; *Cridland v Luxton* (1834) 4 LJ Ch 65; *Bradford v Brownjohn* (1868) 3 Ch App 711. The rate of interest which has been allowed is 4% (*Bradford v Brownjohn* supra), but see PARA 945 note 5 ante.

4 See notes 5-6 infra.

5 *White v White* (1804) 9 Ves 554; *Reeves v Creswick* (1839) 3 Y & C Ex 715; *Greenwood v Evans* (1841) 4 Beav 44; but see *Jones v Jones* (1846) 5 Hare 440; *Hudleston v Whelpdale* (1852) 9 Hare 775 at 788.

6 *Hudleston v Whelpdale* (1852) 9 Hare 775 at 789.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(3) ADJUSTMENT OF BURDENS BETWEEN CAPITAL AND INCOME/(iv) Expenses of Renewing Leases/978. Commutation of additional rent where leaseholds formerly perpetually renewable.

978. Commutation of additional rent where leaseholds formerly perpetually renewable.

The additional rent into which any fine or other money (including a heriot) payable on the renewal of a perpetually renewable lease or underlease¹ was converted on 1 January 1926² may be commuted in whole or in part³. A power contained in a settlement authorising or directing the application or raising of any money for or in the discharge of the costs, fines and other sums payable on the renewal of any perpetually renewable lease or underlease is deemed to authorise the payment, application or raising of money for such commutation⁴. If the land comprised in the lease or underlease is settled land or subject to a trust of land⁵, the commutation money may be paid out of capital money⁶ or personal estate (not being chattels real) held on the same trusts as the land⁷.

1 As to renewable leases see PARA 975 ante.

2 See LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 541.

3 See the Law of Property Act 1922 s 145, Sch 15 para 14(1)(a) (amended by the Law of Property (Amendment) Act 1924 s 2, Sch 2). A tenant for life of settled land may enter into such agreements and do such acts and things in relation to the conversion of perpetually renewable leases or underleases into long terms as the lessor or lessee or underlessee, as the case may require, is by any enactment authorised to enter into or do: see the Settled Land Act 1925 s 62(4). For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante. For the meaning of 'settled land' see PARA 680 text to note 2 ante.

4 See the Law of Property Act 1922 Sch 15 para 17(1).

5 For the meaning of 'trust of land' see PARA 676 note 5; definition applied by the Interpretation Act 1978 s 5, Sch 1.

6 See PARA 795 ante. If the reversion is settled land, or subject to a trust of land, any commutation money must be treated as capital money or proceeds of sale of the land as the case may be: see the Law of Property Act 1922 Sch 15 para 17(3) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 1).

7 Law of Property Act 1922 Sch 15 para 17(4).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(3) ADJUSTMENT OF BURDENS BETWEEN CAPITAL AND INCOME/(iv) Expenses of Renewing Leases/979. Trust to renew becoming impossible to perform.

979. Trust to renew becoming impossible to perform.

Where there is a paramount trust to renew a lease for the benefit of all persons entitled in succession, the lease must be sold if from any cause renewal becomes impossible, and the proceeds of sale and of any sum set apart to provide for renewals invested as capital¹, or, if possible, the reversion in fee simple should be purchased by the trustees for the benefit of the estate². If, however, the court on the construction of the settlement comes to the conclusion that the tenant for life is entitled in specie to the whole rents and profits, charged only with the payment of such a sum as may be required for the renewal, then, on the renewal becoming impracticable, there is nothing by which the charge can be ascertained, and no means by which any substituted benefit to be given to the remainderman can be ascertained by the court; the tenant for life is, therefore, entitled to all rents and profits accruing during the co-existence of the existing term and his life, including any sums directed to be accumulated for purpose of renewal and, if the term is sold, to a corresponding proportion of the price obtained for it³. The court does not sanction the purchase of the reversion to the prejudice of the tenant for life by trustees who have a mere power of renewal⁴.

1 *Maddy v Hale* (1876) 3 ChD 327, CA; *Re Barber's Settled Estates* (1881) 18 ChD 624.

2 *Re Lord Ranelagh's Will* (1884) 26 ChD 590.

3 *Richardson v Moore* (1817) Madd & G 83n; *Tardiff v Robinson* (1819) 27 Beav 630n; *Morres v Hodges* (1859) 27 Beav 625; *Re Money's Trusts* (1862) 2 Drew & Sm 94.

4 *Hayward v Pile* (1870) 5 Ch App 214.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(3) ADJUSTMENT OF BURDENS BETWEEN CAPITAL AND INCOME/(iv) Expenses of Renewing Leases/980. Purchase of reversion on renewable lease.

980. Purchase of reversion on renewable lease.

If the tenant for life or his assignee purchases the reversion on a renewable lease, he can only hold it as trustee for the remainderman¹, but he is entitled to a charge on the property for the purchase money, which carries interest at 4 per cent from his death².

1 *Re Lord Ranelagh's Will* (1884) 26 ChD 590; *Phillips v Phillips* (1885) 29 ChD 673, CA.

2 *Mason v Hulke* (1874) 22 WR 622; *Isaac v Wall* (1877) 6 ChD 706. As to the purchase of reversions on settled leaseholds with capital money arising under the Settled Land Act 1925 see PARA 808 ante. As to the rate of interest see, however, PARA 945 note 5 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(4) ADJUSTMENT OF LOSSES BETWEEN TENANT FOR LIFE AND REMAINDERMAN/981. Losses on authorised investments generally.

(4) ADJUSTMENT OF LOSSES BETWEEN TENANT FOR LIFE AND REMAINDERMAN

981. Losses on authorised investments generally.

A tenant for life under an ordinary settlement of personal property¹ is entitled to the whole income arising from authorised investments, notwithstanding any shrinkage or decrease of the capital value, but he is not entitled to share in any augmentation of the capital value². Therefore, in the case of the settled property producing a diminished or no income, the loss must be borne by the tenant for life, and he has no claim to have the loss, or any portion of it, made good out of capital³. Accordingly, a tenant for life has no claim against capital in respect of loss of income by the reduction of dividends on government stock⁴, or by the non-payment of interest on railway bonds where the covenant is to pay out of net earnings available, and no earnings are available, even though the bonds are cumulative⁵, or by the non-payment of cumulative dividends until after the cesser of his interest⁶. Any loss arising from the misappropriation by a trustee of the rents of settled property must be borne by the tenant for life⁷.

1 As to settlements of personalty see PARA 907 et seq ante.

2 *Verner v General and Commercial Investment Trust*[1894] 2 Ch 239 at 258, 270, CA.

3 *Shore v Shore* (1859) 4 Drew 501 at 509; *Yates v Yates* (1860) 28 Beav 637. See, however, *Re Carr's Settlement, Riddell v Carr*[1933] Ch 928, where settled annuities were redeemed under what is now the Rentcharges Act 1977 ss 8-10 (s 10 as amended) (see RENTCHARGES AND ANNUITIES vol 39(2) (Reissue) PARAS 900-902), and the income from the investments of the redemption money being insufficient to pay the annuities in full, the tenants for life were held entitled to have the deficiency made good out of the capital.

4 *Bague v Dumergue* (1853) 10 Hare 462.

5 *Re Taylor's Trusts, Matheson v Taylor*[1905] 1 Ch 734.

6 *Re Sale, Nisbet v Philp*[1913] 2 Ch 697; *Re Grundy, Grundy v Holme* (1917) 117 LT 470; *Re Wakley, Wakley v Vachel*[1920] 2 Ch 205, CA.

7 *Solley v Wood* (1861) 29 Beav 482.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(4) ADJUSTMENT OF LOSSES BETWEEN TENANT FOR LIFE AND REMAINDERMAN/982. Losses on authorised mortgage investments.

982. Losses on authorised mortgage investments.

If the authorised investment is a security, such as a mortgage, not only for principal but also for interest, then, notwithstanding any payment of interest to the tenant for life, he has a right as against the remainderman to have arrears of interest charged upon the security, and the proceeds of the insufficient security must be apportioned in the proportions which the amount due for capital and the amount due to the tenant for life for arrears of interest bear to one another¹. This right to apportionment is not defeated by a provision that no property not actually producing income is to be treated as producing income². Where the mortgagees enter into possession of the mortgaged property, the rents of the property, pending realisation, ought to be applied in the first place in payment to the tenant for life of sums not exceeding the interest on the mortgages, and any excess should be applied as capital³. Interest on arrears of interest is not allowed⁴, but where a mortgage contained a proviso for reduction of interest on punctual payment the arrears were calculated on the full rate of interest⁵.

If the equity of redemption becomes barred, by virtue either of the Limitation Act 1980⁶, or of an order for foreclosure or otherwise, the tenant for life is then entitled to the actual net rents, even if they exceed the amount of the interest which was previously payable under the mortgage, but he is not entitled to have any subsequent deficiency recouped out of capital⁷. However, this will not affect any right to apportionment which had accrued prior to the equity of redemption becoming barred⁸.

1 *Re Moore, Moore v Johnson* (1885) 54 LJ Ch 432; *Re Barker, Barker v Barker* [1897] WN 154; *Lyon v Mitchell* [1899] WN 27; *Re Alston, Alston v Houston* [1901] 2 Ch 584; *Stewart v Kingsale* [1902] 1 IR 496; *Re Atkinson, Barbers' Co v Grose-Smith* [1904] 2 Ch 160, CA (overruling *Re Foster, Lloyd v Carr* (1890) 45 ChD 629, and *Re Phillimore, Phillimore v Herbert* [1903] 1 Ch 942); *Re Southwell, Carter v Hungerford* (1915) 85 LJ Ch 70; *Re Walker's Settlement Trusts, Watson v Walker* [1936] Ch 280; *Re Morris's Will Trusts, Public Trustee v Morris* [1960] 3 All ER 548, [1960] 1 WLR 1210. Cf *Re Pennington, Pennington v Pennington* [1914] 1 Ch 203, CA.

2 *Re Hubbuck, Hart v Stone* [1896] 1 Ch 754, CA; *Re Lewis, Davies v Harrison* [1907] 2 Ch 296.

3 *Re Coaks, Coaks v Bayley* [1911] 1 Ch 171. In *Re Broadwood's Settlements, Broadwood v Broadwood* [1908] 1 Ch 115, where there were successive tenants for life, sums received as income were ordered to be distributed between the personal representatives of the deceased tenants for life and the remainderman in proportion to the amounts owing to them for arrears of interest when the particular sum was received. In *Re Southwell, Carter v Hungerford* (1915) 85 LJ Ch 70, rents distributed under a similar order had to be brought into hotchpot (as to which see PARA 924 ante) when the security was realised, the ultimate distribution being made on the principle laid down in *Re Atkinson, Barbers' Co v Grose-Smith* [1904] 2 Ch 160, CA. See, however, *Re Anketill's Estate, ex p Scottish Provident Institution* (1891) 27 LR Ir 331, where a receiver had been appointed; and *Re Godden, Teague v Fox* [1893] 1 Ch 292. See also MORTGAGE vol 77 (2010) PARA 101 et seq.

4 *Re Moore, Moore v Johnson* (1885) 54 LJ Ch 432.

5 *Re Atkinson, Barbers' Co v Grose-Smith* [1904] 2 Ch 160, CA.

6 See the Limitation Act 1980 ss 16, 17; and LIMITATION PERIODS vol 68 (2008) PARA 1095 et seq.

7 See the Law of Property Act 1925 s 31 (as amended). See also *Re Horn's Estate, Public Trustee v Garnett* [1924] 2 Ch 222. This principle does not apply if, before 1912, the land was accepted and settled as land: see the Law of Property Act 1925 s 31(5). See also *Re Bogg, Allison v Paice* [1917] 2 Ch 239.

8 *Re Horn's Estate, Public Trustee v Garnett* [1924] 2 Ch 222.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(4) ADJUSTMENT OF LOSSES BETWEEN TENANT FOR LIFE AND REMAINDERMAN/983. Losses on investments not immediately realisable.

983. Losses on investments not immediately realisable.

A loss arising on the ultimate realisation of a security covering both principal and interest, which for some time after entitlement to its possession could not be realised, must be shared between the tenant for life and the remainderman in the same way as they would have shared it if the loss had occurred when they first became entitled in possession to the fund, the principle being that neither may gain an advantage over the other¹. In such cases a calculation is made of what principal sum, if invested at the date when the conversion should have taken place, would amount with interest to the sum actually recovered. Interest on this principal sum, or, in other words, the difference between such principal sum and the amount actually recovered, goes to the tenant for life and the rest is treated as principal².

1 *Cox v Cox* (1869) LR 8 Eq 343.

2 *Turner v Newport* (1846) 2 Ph 14; *Cox v Cox* (1869) LR 8 Eq 343. In both these cases the rate of interest was calculated at 4%, but as to the rate of interest see PARA 945 note 5 ante. The same principle was applied in *Re Duke of Cleveland's Estate, Hay v Wolmer* [1895] 2 Ch 542, where money was paid away under an erroneous court order and subsequently recovered, but without interest.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(4) ADJUSTMENT OF LOSSES BETWEEN TENANT FOR LIFE AND REMAINDERMAN/984. Loss on conversion of authorised investment into unauthorised security.

984. Loss on conversion of authorised investment into unauthorised security.

The same principle as in the case of investments not immediately realisable¹ has been applied to a trustee wrongfully selling out an authorised investment and investing the proceeds in an unauthorised equitable mortgage². If the tenant for life in such a case was responsible for the breach of trust, the remainderman would have the right to have the income received refunded to capital³.

1 As to such investments see PARA 983 ante.

2 See *Re Bird, Re Evans, Dodd v Evans* [1901] 1 Ch 916 (a case on consols, where the executor of the tenant for life gave credit for interest actually received, but was not liable to refund any overpayment, as the tenant for life was in no way responsible for, or cognisant of, the breach of trust). This case is difficult to reconcile with *Re Grabowski's Settlement* (1868) LR 6 Eq 12, except that in the latter case the dividends actually received by the tenant for life were in excess of anything that could have been recovered on an apportionment.

3 *Raby v Ridehalgh* (1855) 7 De GM & G 104.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(4) ADJUSTMENT OF LOSSES BETWEEN TENANT FOR LIFE AND REMAINDERMAN/985. Losses on trust business.

985. Losses on trust business.

Where a business is vested in trustees in trust for successive tenants for life, losses incurred in carrying on the business must normally be made good out of subsequent profits¹, but a direction to defray losses out of the estate throws them on capital², and, where a share in a partnership was settled, the practice of the partnership was followed, and accordingly, losses were written off against capital³. Where a business is only carried on temporarily until it can be sold profitably, and not pursuant to a direction in the settlement, it seems that any loss ought to be apportioned between capital and interest⁴.

1 *Upton v Brown* (1884) 26 ChD 588.

2 *Re Millichamp, Goodale and Bullock* (1885) 52 LT 758; *Re Clapham, Rutter v Clapham* (1886) 2 TLR 424, where it was held that the losses and profits on the working of several steamboats, part of the estate, should be set off against each other, and that the tenant for life should take the net income.

3 *Gow v Forster* (1884) 26 ChD 672.

4 See *Re Hengler, Frowde v Hengler* [1893] 1 Ch 586, where the sale of a leasehold circus forming part of a testator's residuary estate was postponed for the benefit of the estate, and the annual profit, if any, or loss on it was apportioned between income and capital by calculating what sum, accumulating at compound interest at 4%, with yearly rests from the day appointed for conversion would, together with such interest and accumulations, after deducting income tax, have been equivalent to the amount of such profit or loss, and crediting to or charging against capital the sum so calculated, and crediting to or charging against income the rest of such profit or loss.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/986. Liability for waste.

(5) WASTE

986. Liability for waste.

A tenant for life has the right to the full enjoyment of the land during the continuance of his estate¹ subject to the duty of leaving it unimpaired for the remainderman. This duty is defined by the doctrine of waste². Waste may be legal or equitable³, and legal waste may be either voluntary⁴ or permissive⁵.

The liability of a tenant for life⁶ for voluntary waste depends on the terms of the settlement, for he is so liable unless, as is frequently the case, he is expressly made unimpeachable for waste⁷. A tenant for life, even though impeachable for waste, is not liable for permissive waste unless his estate is expressly made subject to the condition of maintaining the premises⁸. On the other hand every tenant for life, whether impeachable for waste or not, is liable for equitable waste⁹.

- 1 As to the right to emblements after the estate determines see PARA 956 ante.
- 2 Co Litt 53a. As to the nature of waste see generally LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 431.
- 3 As to equitable waste see PARA 997 post.
- 4 As to voluntary waste see PARA 987 post.
- 5 As to permissive waste see PARA 995 post.
- 6 An action for waste will lie against a tenant by the curtesy, a tenant in dower, or a tenant for life, for years, or half a year: Co Litt 53a et seq. A tenant in tail cannot be impeached for waste, either legal or equitable. A tenant in tail after possibility of issue extinct, however, or a tenant in fee simple subject to an executory devise over, may be restrained from committing equitable, but not legal, waste: *Turner v Wright* (1860) 2 De GF & J 234; *Re Hanbury's Settled Estates*[1913] 2 Ch 357; cf *A-G v Duke of Marlborough* (1818) 3 Madd 498; *Lowndes v Norton* (1864) 33 LJ Ch 583; *Re Ridge, Hellard v Moody*(1885) 31 ChD 504 at 507, CA; *Pardoe v Pardoe* (1900) 82 LT 547; *Re Fitzwalter, Wright v Plumptre*[1943] Ch 285, [1943] 2 All ER 328, CA. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.
- 7 *Woodhouse v Walker*(1880) 5 QBD 404. See also PARA 994 post.
- 8 As to such a condition see PARA 995 post.
- 9 See PARA 997 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/987. Voluntary waste.

987. Voluntary waste.

Voluntary waste is an act which is injurious to the inheritance either: (1) by diminishing the value of the estate; (2) by increasing the burden upon it; or (3) by impairing the evidence of title¹. Unless unimpeachable for waste², a tenant for life may not, therefore, plough up ancient pasture³, pull down buildings, even though ruinous, without rebuilding, or erect new buildings, or suffer such new buildings, if erected, to be wasted⁴. He may not open new mines, quarries or claypits, or work old abandoned pits or mines⁵, but he may work mines or pits which have been previously opened⁶ in the sense that they have been worked, not necessarily for profit, so long as such previous working or use was not limited to any special or restricted purpose, such as the purpose of fuel or repair to some particular tenements⁷.

1 *Doe d Grubb v Earl of Burlington* (1833) 5 B & Ad 507. Waste by impairing evidence of title is, however, a very peculiar head of the law which has not been extended in modern times (*Jones v Chappell* (1875) LR 20 Eq 539 at 541) and may be regarded as obsolete.

2 As to tenants for life unimpeachable for waste see PARA 994 post.

3 *Cole v Peyson* (1637) 1 Rep Ch 106; *Tregonwell v Lawrence* (1674) 2 Rep Ch 94; *Simmons v Norton* (1831) 7 Bing 640 at 648; *Bobbett v Kennedy* (1916) 50 ILT 171. See, however, *Duke of St Albans v Skipwith* (1845) 8 Beav 354. In fee simple estates a continuance in pasture for 20 years during the life of the donor or testator impresses on land the character of ancient pasture: *Morris v Morris* (1825) 1 Hog 238 at 241. See also *Murphy v Daly* (1860) 13 ICLR 239, Ir CA. See further AGRICULTURAL LAND vol 1 (2008) PARA 342; LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 431.

4 Co Litt 53a. However, the erection of new buildings which constitute improvements is permitted (see PARAS 794 ante, 993 post). See also LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 434.

5 *Viner v Vaughan* (1840) 2 Beav 466. As to the statutory power to grant mining leases see PARA 843 ante; and MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 371 et seq.

6 As to what is an open mine see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 7-11.

7 See MINES, MINERALS AND QUARRIES VOL 31 (2003 Reissue) PARA 9.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/988. Common law exception for timber.

988. Common law exception for timber.

Apart from statute, a tenant for life, even if impeachable for waste, can cut timber necessary for repairs¹ in the exercise of his right to estovers or botes². He can also cut trees, with certain exceptions³, other than timber trees⁴ or trees which would be timber if they were over 20 years old, but timber trees under 20 years old may be cut down in the course of the proper management of the estate for the purpose of allowing the growth of other timber⁵. If there is a local usage to fell timber trees periodically when grown in woods with a view to ensuring a succession of timber and to preserving the woods, the tenant for life is entitled to cut them, and if it is a necessary implication from the terms of the settlement that the settlor intended the woods to be enjoyed as an annual source of revenue, the tenant for life takes the proceeds of the sale⁶. If timber is decaying or injurious to the growth of other trees, so that to cut it is beneficial to the inheritance, the court can authorise a tenant for life to cut it⁷.

1 Timber for repairs may not be cut in advance (*Gorges v Stanfield* (1597) Cro Eliz 593), or sold to pay the wages of men employed to do the repairs (Bro Abr, Waste, pl 112) or in order to purchase other timber with the proceeds (Co Litt 53b; *Simmons v Norton* (1831) 7 Bing 640). As to the statutory right to cut timber see PARA 989 post.

2 Co Litt 53a. These rights must be distinguished from common of estovers: see COMMONS vol 13 (2009) PARA 432. The estovers taken must be reasonable: Co Litt 41b, 53b. The right to take them may be restricted by special covenant (Co Litt 41b), but this does not make the taking of estovers waste (see *Anon* (1561) 2 Dyer 198b).

3 Ornamental trees or germins, that is, stools of underwood, trees planted for the protection of the house, and quickset fences of whitethorn, or fruit trees growing in a garden or an orchard, may not be cut by a tenant for life impeachable for waste: Co Litt 53a.

4 As to what trees are timber see FORESTRY vol 52 (2009) PARA 54.

5 *Pidgeley v Rawling* (1845) 2 Coll 275; *Bagot v Bagot, Legge v Legge* (1863) 32 Beav 509 at 517; *Earl of Cowley v Wellesley* (1866) LR 1 Eq 656; *Honywood v Honywood* (1874) LR 18 Eq 306. Cf *Dunn v Bryan* (1872) IR 7 Eq 143.

6 *Dashwood v Magniac* [1891] 3 Ch 306, CA (considering the law laid down by Jessel MR in *Honywood v Honywood* (1874) LR 18 Eq 306, that the tenant for life is entitled to cut timber on timber estates, ie estates which are cultivated merely for the produce of saleable timber, and where the timber is cut periodically); *Re Trevor-Batye's Settlement, Bull v Trevor-Batye* [1912] 2 Ch 339.

7 *Bewick v Whitfield* (1734) 3 P Wms 267; *Hussey v Hussey* (1820) 5 Madd 44; *Seagram v Knight* (1867) 2 Ch App 628, CA.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/989. Statutory exception for timber.

989. Statutory exception for timber.

Under the Settled Land Act 1925, a tenant for life¹ who is impeachable for waste in respect of timber may, on obtaining the consent of the trustees of the settlement² or a court order³, cut and sell timber which is ripe and fit for cutting⁴. He may also cut down and use timber and other trees, provided that they have not been planted or left standing for shelter or ornament⁵, for the purpose of executing, maintaining or repairing any improvement authorised by that Act⁶.

1 As to the tenant for life see PARA 761 et seq ante.

2 As to the trustees of the settlement see PARA 750 et seq ante.

3 As to applications to the court see PARAS 792-793 ante.

4 See the Settled Land Act 1925 s 66(1); and PARA 848 ante. As to what trees are timber see FORESTRY vol 52 (2009) PARA 54.

5 As to ornamental timber see PARAS 998-1000 post.

6 See the Settled Land Act 1925 s 89; and PARA 794 ante. As to authorised improvements see PARA 815 et seq ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/990. Proceeds of timber and other trees properly cut.

990. Proceeds of timber and other trees properly cut.

Where the cutting of timber is authorised at common law either under a court order or otherwise¹, the proceeds follow the interests of the estate and are accordingly invested and the income given to the tenant for life impeachable for waste in the first place². After his death the proceeds become the property of the first tenant for life unimpeachable for waste³, or the owner of the first estate of inheritance, whichever estate first comes into possession⁴.

On any exercise by a tenant for life impeachable for waste of the statutory power to cut and sell timber⁵ three quarters of the net proceeds of sale must be set aside as capital money arising under the Settled Land Act 1925⁶, and the other quarter goes as rents and profits⁷.

A tenant for life impeachable for waste is entitled to the proceeds of sale of trees (not being timber) cut in the ordinary course of management⁸.

1 *Waldo v Waldo* (1841) 12 Sim 107; *Gent v Harrison* (1859) John 517.

2 *Wickham v Wickham* (1815) 19 Ves 419 at 423; *Tooker v Annesley* (1832) 5 Sim 235; *Waldo v Waldo* (1841) 12 Sim 107; *Phillips v Barlow* (1844) 14 Sim 263; *Gent v Harrison* (1859) John 517; *Bagot v Bagot, Legge v Legge* (1863) 32 Beav 509; *Honywood v Honywood* (1874) LR 18 Eq 306; *Lowndes v Norton* (1877) 6 ChD 139; *Hartley v Pendarves* [1901] 2 Ch 498.

3 *Waldo v Waldo* (1841) 12 Sim 107; *Phillips v Barlow* (1844) 14 Sim 263; *Gent v Harrison* (1859) John 517; *Lowndes v Norton* (1877) 6 ChD 139. As to tenants unimpeachable for waste see PARA 994 post.

4 *Honywood v Honywood* (1874) LR 18 Eq 306. The statement in *Honywood v Honywood* supra that the income is given to the successive owners of the estate until the owner of the first absolute estate of inheritance is reached who can take away the money must be taken to refer to the case of successive tenants for life impeachable for waste.

5 See the Settled Land Act 1925 s 66(1); and PARAS 848, 989 ante.

6 For the meaning of 'capital money arising under the Act' see PARA 795 ante.

7 See the Settled Land Act 1925 s 66(2); and PARA 848 ante. Any compensation for refusal of a felling licence under the Forestry Act 1967 s 11, or sum paid by the Forestry Commissioners under s 26 for trees felled and removed by them, where the tenant for life is impeachable for waste in respect of the trees, must be paid to the trustees and applied by them as if it were proceeds of sale of timber cut in exercise of the statutory power: see s 29(3); and FORESTRY vol 52 (2009) PARA 138.

8 *Honywood v Honywood* (1874) LR 18 Eq 306; *Re Harker's Will Trusts, Harker v Bayliss* [1938] Ch 323, [1938] 1 All ER 145.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/991. Proceeds of timber wrongfully cut.

991. Proceeds of timber wrongfully cut.

A tenant for life impeachable for waste who takes upon himself to cut and sell timber without authority does so at his peril, and can never be permitted to derive any advantage from his wrongful act¹. In such a case the timber cut or its produce belongs to the owner of the first vested estate of inheritance², notwithstanding that other persons may come into existence who would be entitled to a first estate tail, and notwithstanding the existence of an intervening estate in a tenant for life without impeachment of waste³. However, if in such a case there is fraudulent collusion between the tenant for life and the owner of the inheritance in remainder, the court interferes and orders the value of the timber which was wrongfully cut to be impounded and held for the benefit of the estate and all persons interested in it⁴, and the same course will be adopted where the tenant for life is himself the owner of the first vested estate of inheritance⁵.

1 *Williams v Duke of Bolton* (1784) 1 Cox Eq Cas 72; *Seagram v Knight* (1867) 2 Ch App 628, CA. As to the devolution of timber on the death of the tenant for life see EXECUTORS AND ADMINISTRATORS.

2 *Bowles Case* (1615) 11 Co Rep 79b; *Whitfield v Bewit* (1724) 2 P Wms 240; *Bewick v Whitfield* (1734) 3 P Wms 267; *Honywood v Honywood* (1874) LR 18 Eq 306 at 311.

3 *Dashwood v Magniac* [1891] 3 Ch 306 at 387, CA. See also *Pigot v Bullock* (1792) 1 Ves 479 at 484; *Gent v Harrison* (1859) John 517 at 524; *Re Cavendish, Cavendish v Mundy* [1877] WN 198, dissenting from the dictum of Romilly MR in *Bagot v Bagot, Legge v Legge* (1863) 32 Beav 509 at 523, that the produce does not belong to the first tenant in tail in being while there is a possibility of prior tenants in tail coming into existence. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq. As to the tenant for life unimpeachable for waste see PARA 994 post.

4 *Garth v Cotton* (1753) 3 Atk 751; *Birch-Wolfe v Birch* (1870) LR 9 Eq 683; *Re Cavendish, Cavendish v Mundy* [1877] WN 198.

5 *Williams v Duke of Bolton* (1784) 1 Cox Eq Cas 72; *Powlett v Duchess of Bolton* (1797) 3 Ves 374; *Birch-Wolfe v Birch* (1870) LR 9 Eq 683.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/992. Windfalls.

992. Windfalls.

Timber blown down in a storm belongs, at law, to the owner of the first vested estate of inheritance¹, but, in the absence of improper conduct on the part of the tenant for life, the rule is to treat the produce of such timber trees as capital and allow the income to the tenant for life². If trees on a settled estate, other than timber, are blown down, courts of equity, so far as may be, struggle to prevent accident interfering with the rights of the parties, and endeavour to place the tenant for life and the remainderman in the same position as if the windfall had not occurred. Accordingly, where larch plantations were so damaged by a gale that it became necessary to clear and replant the ground, the court directed the proceeds of sale of the larch trees to be invested, but fixed an annual sum, determined by the average income which would have been derived from the plantation if the gales had not occurred, to be paid to the tenant for life out of the income, and, if necessary, the capital of the invested fund³. Generally, a tenant for life is entitled to have the benefit of the sale of all such trees blown down by the wind as he would himself be entitled to cut⁴.

1 *Whitfield v Bewit* (1724) 2 P Wms 240; *Aston v Aston* (1750) 1 Ves Sen 264, 396; *Garth v Cotton* (1753) 3 Atk 751; *Honywood v Honywood* (1874) LR 18 Eq 306.

2 *Bateman v Hotchkin* (1862) 31 Beav 486; *Bagot v Bagot, Legge v Legge* (1863) 32 Beav 509; *Re Harrison's Trusts, Harrison v Harrison* (1884) 28 ChD 220 at 228, CA. See also *Gage and Roper v Pigott and De Jenner* [1919] 1 IR 23, Ir CA.

3 *Re Harrison's Trusts, Harrison v Harrison* (1884) 28 ChD 220, CA. Cf *Re Terry, Terry v Terry* (1918) 87 LJ Ch 577, CA, where larch trees were sold in exceptional circumstances, and the court ordered half the proceeds of sale to be capitalised and the other half to be paid to the tenants for life. See also *Gage and Roper v Pigott and De Jenner* [1919] 1 IR 23, Ir CA.

4 *Bateman v Hotchkin* (1862) 31 Beav 486. It is a question of fact as regards each particular tree whether it has been blown down so as to be detached from the soil: *Re Ainslie, Swinburn v Ainslie* (1885) 30 ChD 485, CA.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/993. Meliorating waste.

993. Meliorating waste.

A tenant for life impeachable for waste is not liable in respect of acts which, although technically voluntary waste¹, in fact improve the inheritance² and are commonly known as meliorating waste³. Nevertheless, the opinion has been expressed that such acts are not waste at all⁴. If the acts done in fact constitute an injury to the land, it is no defence to show that there are compensating advantages⁵.

1 As to voluntary waste see PARA 987 ante.

2 *Birch-Wolfe v Birch* (1870) LR 9 Eq 683; *Harris v Ekins* (1872) 26 LT 827.

3 See LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 432.

4 *Jones v Chappell* (1875) LR 20 Eq 539.

5 *West Ham Central Charity Board v East London Waterworks Co* [1900] 1 Ch 624. See also LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARAS 431-432.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/994. Privilege of tenant for life unimpeachable for waste.

994. Privilege of tenant for life unimpeachable for waste.

If, as is usual, the tenant for life is made tenant for life without impeachment of waste, he has as great power to commit legal waste as a tenant in tail has¹ and so is not liable for voluntary waste². He is entitled, therefore, to open new mines or pits, and to fell timber (but not, except in proper thinning, trees planted as an improvement under the Settled Land Acts 1882 to 1890³, or the Settled Land Act 1925⁴), and the produce of minerals or timber belongs to him, whether severed from the estate by his act or not, but not until severance⁵. This remains the law even if the sale was made not under a power contained in the settlement, but under the statutory powers conferred by the Settled Land Act 1882 or the Settled Land Act 1925⁶. It follows that on a sale of the estate with timber he is not entitled to the produce of the timber⁷.

The exemption from liability for waste of a tenant for life without impeachment for waste is a special power given to him to appropriate part of the inheritance, and may be controlled or qualified, either impliedly or expressly, by special powers given to the trustees⁸, or it may be restricted by exceptions, for example for pulling down houses⁹, for voluntary waste¹⁰, for wilful waste¹¹, for spoil or destruction or voluntary or permissive waste or suffering buildings or houses to go to decay and not repairing them¹². If the words used are 'without impeachment of any action of waste', no action can be brought, but it would seem that the tenant for life is not entitled to the thing severed¹³. The privilege 'without impeachment of waste' is annexed to the privity of the estate¹⁴, and it is consequently lost by change of the estate, as where a lessee for years accepts a confirmation to him for his life¹⁵, but it devolves on the assignee of the estate¹⁶.

1 *Bowles Case* (1615) 11 Co Rep 79b; Littleton's Tenures s 352; Co Litt 220a. See also *Re Hanbury's Settled Estates* [1913] 2 Ch 357; and PARA 986 note 6 ante. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

2 *Lowndes v Norton* (1864) 33 LJ Ch 583; *Re Ridge, Hellard v Moody* (1885) 31 ChD 504 at 507, CA; *Pardoe v Pardoe* (1900) 82 LT 547. As to voluntary waste see PARA 987 ante.

3 As to these Acts see PARA 678 note 1 ante.

4 See the Settled Land Act 1925 s 88(2); and PARA 964 ante.

5 *Anon* (1729) Mos 237; *Pyne v Dor* (1785) 1 Term Rep 55; *Wolf v Hill* (1806) 2 Swan 149n; *Williams v Williams* (1808) 15 Ves 419 at 425; *Bridges v Stephens* (1817) 2 Swan 150n; *Re Hall, Hall v Hall* [1916] 2 Ch 488; *Re Earl of Londesborough, Spicer v Earl of Londesborough* [1923] 1 Ch 500.

6 See *Re Llewellyn, Llewellyn v Williams* (1887) 37 ChD 317.

7 *Doran v Wiltshire* (1792) 3 Swan 699; *Wolf v Hill* (1806) 2 Swan 149n.

8 *Kekewich v Marker* (1851) 3 Mac & G 311; *Briggs v Earl of Oxford* (1851) 5 De G & Sm 156. See also *Lord Lovat v Duchess of Leeds (No 1)* (1862) 2 Drew & Sm 62, where an overriding trust to discharge mortgages out of the rents and profits of the settled estates was held not to interfere with the rights of a tenant for life to cut timber.

9 *Aston v Aston* (1750) 1 Ves Sen 264.

10 *Garth v Cotton* (1753) 3 Atk 751.

11 *Wickham v Wickham* (1815) 19 Ves 419.

12 See *Vincent v Spicer* (1856) 22 Beav 380, where it was declared that the tenant for life was entitled to cut such timber (except ornamental) as the owner of an estate in fee simple having not only a due regard to his own interest, but to the permanent advantage of the estate, might properly cut in due course of management.

13 Co Litt 220a; *Bowles Case* (1615) 11 Co Rep 79b.

14 *Bowles Case* (1615) 11 Co Rep 79b.

15 See *Bowles Case* (1615) 11 Co Rep 79b.

16 Anon (1729) Mos 237; *Watlington v Waldron* (1853) 4 De GM & G 259; *Beaumont v Marquis of Salisbury* (1854) 19 Beav 198. See also *Davis v Duke of Marlborough* (1819) 2 Swan 108 at 144. As to the rights of assignees of the timber who claim under the tenant for life see *Gordon v Woodford* (1859) 27 Beav 603.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/995. Permissive waste.

995. Permissive waste.

Permissive waste is an omission by which damage results to premises, such as allowing houses to fall into decay¹. A tenant for life, whether or not made impeachable for waste, is not liable for permissive waste². If, however, the settlor has imposed a condition that the tenant for life is to keep the premises in repair, there is a personal liability which can be enforced by the court³, even in respect of dilapidations existing at the time when the settlement came into force⁴. Damages may be recovered in respect of such a liability from the estate of the tenant for life after his death, the proper measure of such damages being such sum as is reasonably necessary to put the premises in the state of repair in which he ought to have left them⁵.

1 2 Co Inst 145.

2 *Lord Castlemaine v Lord Craven* (1733) 22 Vin Abr 523, pl 11; *Wood v Gaynor* (1761) Amb 395; *Powys v Blaggrave* (1854) 4 De GM & G 448; *Barnes v Dowling* (1881) 44 LT 809, DC; *Re Hotchkiss, Freke v Calmady* (1886) 32 ChD 408, CA; *Re Cartwright, Avis v Newman* (1889) 41 ChD 532; *Re Parry and Hopkin* [1900] 1 Ch 160; *Re Owen, Slater v Owen* [1912] 1 Ch 519. The principle applies equally to land settled by the instrument creating the settlement and to land purchased under a direction contained in such an instrument: *Re Freeman, Dimond v Newburn* [1898] 1 Ch 28. In the face of these cases, *Parteriche v Powlet* (1742) 2 Atk 383 cannot be relied on. See also *Gibson v Wells* (1805) 1 Bos & PNR 290 (tenancy at will); *Herne v Bembow* (1813) 4 Taunt 764 (lessee under a lease which contained no covenant to repair). As to the liability of tenants for years for permissive waste generally see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 434. As to tenants unimpeachable for waste see PARA 994 ante.

3 *Caldwall v Baylis* (1817) 2 Mer 408; *Gregg v Coates, Hodgson v Coates* (1856) 23 Beav 33; *Woodhouse v Walker* (1880) 5 QBD 404; *Re Williames, Andrew v Williames* (1885) 54 LT 105, CA; *Battyany v Walford* (1886) 33 ChD 624 (affd (1887) 36 ChD 269, CA); *Re Bradbrook, Lock v Willis* (1887) 56 LT 106; *Dashwood v Magniac* [1891] 3 Ch 306 at 335, CA; *Dingle v Coppen, Coppen v Dingle* [1899] 1 Ch 726; *Jay v Jay* [1924] 1 KB 826, DC; *Haskell v Marlow* [1928] 2 KB 45 (where the tenant for life was bound to keep the property in good repair and condition 'reasonable wear and tear excepted'); *Brown v Davies* [1958] 1 QB 117, [1957] 3 All ER 401, CA. Cf *Re Field, Sanderson v Young* [1925] Ch 636. As to the meaning of 'fair wear and tear excepted' see *Regis Property Co Ltd v Dudley* [1959] AC 370, [1958] 3 All ER 491, HL. If on renewal of leaseholds the tenant for life covenants with the lessor to do repairs he is under the same personal liability if he neglects to perform the covenant: *Marsh v Wells* (1824) 2 Sim & St 87. A direction that trustees are to pay for repairs out of rents throws the cost of ordinary repairs on income (*Crowe v Crisford* (1853) 17 Beav 507; *Clarke v Thornton* (1887) 35 ChD 307; *Re Baring, Jeune v Baring* [1893] 1 Ch 61; *Debney v Eckett* (1894) 43 WR 54; *Re Thomas, Weatherall v Thomas* [1900] 1 Ch 319 at 323), but not the cost of extraordinary repairs which would be equivalent to rebuilding (*Crowe v Crisford* supra; *Cooke v Cholmondeley* (1858) 4 Drew 326). However, where the tenant for life has power to direct the repairs, and the trustees' expenses in carrying out the repairs are charged on the estate, they are borne by capital: *Skinner v Todd* (1881) 46 LT 131.

4 *Cooke v Cholmondeley* (1858) 4 Drew 326; *Re Bradbrook, Lock v Willis* (1887) 56 LT 106.

5 *Woodhouse v Walker* (1880) 5 QBD 404; *Re Williames, Andrew v Williames* (1885) 54 LT 105, CA; *Battyany v Walford* (1886) 33 ChD 624; *Re Bradbrook, Lock v Willis* (1887) 56 LT 106. Cf *Battyany v Walford* (1887) 36 ChD 269, CA.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/996. Liability in respect of leaseholds.

996. Liability in respect of leaseholds.

A tenant for life of settled leaseholds is not liable to the remainderman for permissive waste in the absence of an express condition that he is to keep the settled leaseholds in repair¹. Nevertheless he, and every successive owner of the lease, is bound as between himself and the estate of the settlor to perform the covenants in the lease, including the covenant to repair, and indemnify the estate against any breach². This liability of the tenant for life is unaffected by the fact that he is entitled not to the clear rack rent of the property but only to a small improved ground rent³. However, he is not bound to make good the settlor's deficiencies and put premises into repair which were out of repair at the time when the settlement came into force⁴.

1 This was the law before 1926 whether the estate of the tenant for life was legal or equitable: *Re Parry and Hopkin* [1900] 1 Ch 160; *Re Field, Sanderson v Young* [1925] Ch 636 at 640.

2 *Re Redding, Thompson v Redding* [1897] 1 Ch 876; *Kingham v Kingham* [1897] 1 IR 170; *Re Betty, Betty v A-G* [1899] 1 Ch 821; *Re Gjers, Cooper v Gjers* [1899] 2 Ch 54; *Re Waldron and Bogue's Contract* [1904] 1 IR 240. On this point *Re Baring, Jeune v Baring* [1893] 1 Ch 61, and *Re Tomlinson, Tomlinson v Andrew* [1898] 1 Ch 232, are overruled. The court has power to sanction payment out of capital in special circumstances: see PARA 671 ante. As to covenants to repair see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 436 et seq.

3 *Re Copland's Settlement, Johns v Carden* [1900] 1 Ch 326 (expenses of complying with sanitary notice and dangerous structure notice). As to the nature of rent see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 242.

4 *Harris v Poyner* (1852) 1 Drew 174; *Re Courtier, Coles v Courtier, Courtier v Coles* (1886) 34 ChD 136, CA, distinguishing *Re Fowler, Fowler v Odell* (1881) 16 ChD 723; *Brereton v Day* [1895] 1 IR 518; *Re Smith, Bull v Smith* (1901) 84 LT 835. See also *Pinfold v Shillingford* (1877) 46 LJ Ch 491; *Re Sutton, Sutton v Sutton* (1912) 56 Sol Jo 650.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/997. Equitable waste.

997. Equitable waste.

Equitable waste is such an unconscionable or unreasonable use of legal powers as goes to the destruction of the subject matter¹. Unless expressly authorised by the settlement, a tenant for life, although made unimpeachable for waste, is not entitled to commit equitable waste². Accordingly, the courts have restrained a tenant for life unimpeachable for waste from pulling down the mansion house³, or other houses⁴, from grubbing up a wood so as to destroy it absolutely⁵, from cutting underwood or saplings of insufficient growth, or at unreasonable times⁶, and from cutting down timber planted or left standing for shelter or ornament⁷ of the settled property⁸.

Fixtures which have become part of the inheritance cannot be removed by a limited owner without the commission of waste except in the case of trade fixtures and certain ornamental fixtures⁹.

A tenant in tail after possibility of issue extinct, although from the nature of his estate unimpeachable for voluntary waste¹⁰, has been restrained by the courts from committing equitable waste¹¹.

1 *Aston v Aston* (1750) 1 Ves Sen 264.

2 See the Law of Property Act 1925 s 135; and EQUITY vol 16(2) (Reissue) PARA 603.

3 *Vane v Lord Barnard* (1716) 2 Vern 738.

4 *Abrahall v Bubb* (1679) Freem Ch 53; *Williams v Day* (1680) 2 Cas in Ch 32; *Cook v Winford* (1701) 1 Eq Cas Abr 221; *Cooke v Whaley* (1701) 1 Eq Cas Abr 400. See also *Aston v Aston* (1750) 1 Ves Sen 264, where it was said that the court would restrain the pulling down of farmhouses unless two were pulled down to make into one.

5 *Aston v Aston* (1750) 1 Ves Sen 264.

6 *O'Brien v O'Brien* (1751) Amb 107; *Chamberlayne v Dummer* (1782) 1 Bro CC 166; *Chamberlayne v Dummer* (1792) 3 Bro CC 549; *Brydges v Stephens* (1821) 6 Madd 279. See also *Hole v Thomas* (1802) 7 Ves 589; *Dunn v Bryan* (1872) IR 7 Eq 143 at 154.

7 As to ornamental timber see PARAS 998-1000 post.

8 *Abrahall v Bubb* (1679) Freem Ch 53; *Packington's Case* (1744) 3 Atk 215; *O'Brien v O'Brien* (1751) Amb 107; *Chamberlayne v Dummer* (1782) 1 Bro CC 166; *Marquis of Downshire v Lady Sandys* (1801) 6 Ves 107; *Lord Tamworth v Lord Ferrers* (1801) 6 Ves 419; *A-G v Duke of Marlborough* (1818) 3 Madd 498; *Wombwell v Belasyse* (1825) 6 Ves (2 Edn) 116n; *Wellesley v Wellesley* (1834) 6 Sim 497; *Morris v Morris* (1847) 15 Sim 505 (affd 11 Jur 196); *Turner v Wright* (1860) 2 De GF & J 234; *Ford v Tynte* (1864) 2 De GJ & Sm 127; *Weld-Blundell v Wolseley* [1903] 2 Ch 664; *Gage and Roper v Pigott and De Jenner* [1919] 1 IR 23 at 42, Ir CA. See also *Baker v Sebright* (1879) 13 ChD 179. It is stated in *Coffin v Coffin* (1821) Jac 70 that in one case the court went so far as to restrain a man from cutting down trees that he had planted himself.

9 *Bain v Brand* (1876) 1 App Cas 762 at 767, HL. See also *Re Lord Chesterfield's Settled Estates* [1911] 1 Ch 237. As to what are fixtures see LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 173 et seq. As to questions between the representatives of a tenant for life who has annexed a chattel to the freehold and the remainderman see EXECUTORS AND ADMINISTRATORS.

10 See PARA 986 note 6 ante. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

11 *Abrahah v Bubb* (1679) Freem Ch 53; *Cooke v Whaley* (1701) 1 Eq Cas Abr 400; *Anon* (1704) Freem Ch 278; *A-G v Duke of Marlborough* (1818) 3 Madd 498 at 538. Tenants in tail after possibility of issue extinct are not referred to in the Law of Property Act 1925 s 135: see EQUITY vol 16(2) (Reissue) PARA 603.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/998. Test whether timber is ornamental.

998. Test whether timber is ornamental.

In determining whether timber is or is not ornamental, the question for the court is not whether it is or is not ornamental in the court's opinion, but whether on the evidence it was planted or left by the owner of the estate for the time being for the purposes of ornament or shelter¹. The taste of a testator binds the parties and, if the object in planting timber or leaving it standing is ornamental, the timber is protected whether the object is achieved or not².

The test to be applied in each case is whether the settlor has by his disposition or acts indicated that there is to be a continuous enjoyment in succession of that which he has himself enjoyed, in which case it is against conscience that a tenant for life, claiming under his disposition, should by the exercise of a legal power defeat that intention³. If, therefore, a testator or settlor occupies a mansion house with trees planted or left standing for ornament around or about it, or keeps such a house in a state for occupation, and devises or settles it so as to go in a course of succession, he may reasonably be presumed to anticipate that those who are to succeed him will occupy the mansion house, and it cannot be presumed that he meant it to be denuded of that ornament which he has himself enjoyed. Therefore, in such circumstances the court will protect the trees against the acts of the tenant for life⁴.

1 *Weld-Blundell v Wolseley* [1903] 2 Ch 664. See also *Annesley v Annesley* (1918) 52 ILT 189. As to the cutting of timber see PARA 988 et seq ante.

2 *Marquis of Downshire v Lady Sandys* (1801) 6 Ves 107; *Wombwell v Belasyse* (1825) 6 Ves (2 Edn) 116; *Ashby v Hincks* (1888) 58 LT 557.

3 See note 4 infra.

4 *Micklethwait v Micklethwait* (1857) 1 De G & J 504 at 524-525; *Turner v Wright* (1860) 2 De GF & J 234 at 245; *Weld-Blundell v Wolseley* [1903] 2 Ch 664 at 669.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/999. Protection of ornamental timber.

999. Protection of ornamental timber.

The protection given to ornamental timber about a mansion house by making it equitable waste to fell it¹ has been extended to groups of firs planted two miles away from a mansion house², and to rides and avenues cut through a wood at a considerable distance from a mansion house, but not to the whole wood³. However, a whole wood may be considered ornamental⁴, but in such a case the court directs an inquiry as to what trees can be felled without impairing the beauty of the place as it stood at the time of the settlement⁵. The protection has been extended to trees planted for the purpose of excluding unsightly objects⁶, and even to trees in a park and pleasure grounds which surrounded a mansion house that had been pulled down under a power in the settlement⁷.

A tenant for life who wrongfully pulls down a mansion house does not by doing that acquire a right to cut down ornamental timber⁸, but trees originally planted for the ornament of a mansion house that has been pulled down by the settlor, without any intention of rebuilding, are not protected as ornamental timber between parties claiming under him⁹.

Trees planted for profit are not ornamental timber¹⁰, but in one case the protection was extended to fruit trees in a garden as being ornamental to the house¹¹.

1 As to this protection see PARAS 997-998 ante.

2 *Marquis of Downshire v Lady Sandys* (1801) 6 Ves 107.

3 *Wombwell v Belasyse* (1825) 6 Ves (2 Edn) 116.

4 *Marker v Marker* (1851) 9 Hare 1 at 21. See also *Ford v Tynte* (1864) 2 De GJ & Sm 127 at 131.

5 *Marker v Marker* (1851) 9 Hare 1; *Ashby v Hincks* (1888) 58 LT 557.

6 *Day v Merry* (1810) 16 Ves 375.

7 *Wellesley v Wellesley* (1834) 6 Sim 497. However, no judgment was delivered in this case, and it is not clear whether the decision went on the ground that the mansion house might be rebuilt, or that the trees in question were ornamental to villas that had been erected on the property.

8 *Morris v Morris* (1847) 15 Sim 505. See also *Duke of Leeds v Lord Amherst* (1846) 14 Sim 357.

9 *Micklethwait v Micklethwait* (1857) 1 De G & J 504.

10 *Halliwell v Phillips* (1858) 4 Jur NS 607.

11 *Anon* (1704) Freem Ch 278.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/1000. Decaying ornamental timber.

1000. Decaying ornamental timber.

What would be done by a prudent owner in the ordinary and proper course of management is no measure of the obligation upon a tenant for life with reference to timber planted or left standing for ornament¹, and decaying timber, even if injurious to other trees, may not be cut down if it is ornamental². However, the cutting of decayed wood which is beneficial to the ornamental timber that remains may be directed by the court³ or even done by the tenant for life⁴. If a storm has produced gaps in a piece of ornamental planting, the cutting of a few trees to produce a uniform and consistent appearance instead of an unpleasant and disjointed one would not be construed to be waste⁵.

1 *Ford v Tynte* (1864) 2 De GJ & Sm 127, differing on this point from *Halliwell v Phillips* (1858) 4 Jur NS 607.

2 *Bewick v Whitfield* (1734) 3 P Wms 267; *Lushington v Boldero* (1819) 6 Madd 149.

3 *Lushington v Boldero* (1819) 6 Madd 149; *Ford v Tynte* (1864) 2 De GJ & Sm 127.

4 *Baker v Sebright* (1879) 13 ChD 179. In such a case, however, the court, at the instance of the remainderman, may restrain the tenant for life from cutting and direct the cutting to be done under its supervision: *Baker v Sebright* supra.

5 *Lord Mahon v Lord Stanhope* (1808) 3 Madd 523n.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/5. CAPITAL AND INCOME AND WASTE/(5) WASTE/1001. Remedies for waste.

1001. Remedies for waste.

Where a tenant for life has committed waste for which he is liable¹ the remainderman entitled to have the waste made good is entitled to a remedy by way of equitable lien against the profits receivable by him during the remainder of his life².

An injunction to restrain the commission of waste may be granted where either voluntary or equitable waste is threatened or apprehended³.

The obligation not to commit voluntary or permissive waste is an obligation in tort⁴. Equitable waste is treated as a breach of trust⁵.

1 As to the liability for voluntary waste, permissive waste and equitable waste see PARA 986 et seq ante.

2 See LIEN vol 68 (2008) PARA 858.

3 See CIVIL PROCEDURE vol 11 (2009) PARAS 439-441; EQUITY vol 16(2) (Reissue) PARA 603.

4 See LANDLORD AND TENANT vol 27(1) (2006 Reissue) PARA 431; LIMITATION PERIODS vol 68 (2008) PARA 1160.

5 See EQUITY vol 16(2) (Reissue) PARA 603.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(1) DEFINITION/1002. Meaning of family arrangements.

6. FAMILY ARRANGEMENTS

(1) DEFINITION

1002. Meaning of family arrangements.

A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family¹ either by compromising doubtful or disputed rights or by preserving the family property² or the peace and security of the family by avoiding litigation³ or by saving its honour⁴.

The agreement may be implied from a long course of dealing⁵, but it is more usual to embody or to effectuate the agreement in a deed to which the term 'family arrangement' is applied⁶.

1 The meaning of 'family' is a wide one and includes illegitimate members (*Stapilton v Stapilton* (1739) 1 Atk 2 at 5; *Westby v Westby* (1842) 2 Dr & War 502 at 525-526; *Smith v Mogford* (1873) 21 WR 472), and persons yet to be born (*Re New, Re Leavers, Re Morley*[1901] 2 Ch 534, CA).

2 *Hoblyn v Hoblyn*(1889) 41 ChD 200 at 204.

3 *Hoghton v Hoghton* (1852) 15 Beav 278.

4 *Stapilton v Stapilton* (1739) 1 Atk 2; and the notes on that case in 1 White & Tud LC (9 Edn) 178 et seq.

5 *Clifton v Cockburn* (1834) 3 My & K 76; *Williams v Williams*(1867) 2 Ch App 294. However, any right to set aside a family arrangement which is invalid may be lost by a long period of acquiescence. As to acquiescence generally see EQUITY vol 16(2) (Reissue) PARA 909.

6 As to examples of family arrangements see PARA 1003 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(1) DEFINITION/1003. Examples generally.

1003. Examples generally.

The following different types of settlements, resettlements and agreements have been supported as family arrangements:

- 233 (1) a resettlement by a tenant in tail on attaining full age¹ reducing his interest to a life estate, with remainder to his issue in tail², even though the resettlement provides a jointure for the mother of the tenant in tail, and limits the estate to his younger brothers and their issue in tail, in priority to his own daughters³;
- 234 (2) an agreement to provide for the sisters of the tenant in tail as part of a transaction resettling the family estates⁴;
- 235 (3) a settlement made by parents on the occasion of their child's marriage making provision for the mother, though outside the marriage consideration, on her giving up her right to dower in her husband's estate⁵;
- 236 (4) an agreement between father and son altering the limitations of a family settlement⁶;
- 237 (5) an agreement between father and son that property to which the former would become entitled as heir at law of a person of unsound mind, and which formerly had been in the family, should be settled to the same uses as the family estates⁷;
- 238 (6) an agreement providing for payment of the son's debts in consideration of his giving up his interest in the family business⁸;
- 239 (7) a conveyance of the father's life estate to the son, a tenant in tail, in consideration of payment of the father's debts, provision being made for the father, mother, brothers and sisters⁹;
- 240 (8) a covenant to settle property on a nephew alienated from his father by a marriage without his father's consent, in order to reconcile father and son¹⁰; and
- 241 (9) a resettlement of the family property making provision for an illegitimate son¹¹, or a division of the family property for the same purpose¹².

1 As to the age of majority see PARA 605 note 1 ante. As to resettlements see PARA 720 ante. As to entailed interests see PARA 715 et seq ante; and REAL PROPERTY vol 39(2) (Reissue) PARA 117 et seq.

2 *Winnington v Foley* (1719) 1 P Wms 536. See also the case referred to by Lord Hardwicke as having occurred in Lord Cowper's time, in *Tendril v Smith* (1740) 2 Atk 85 at 86. See further *Jenner v Jenner* (1860) 2 De GF & J 359; *Wakefield v Gibbon* (1857) 1 Giff 401; *Dimsdale v Dimsdale* (1856) 3 Drew 556.

3 See *Hartopp v Hartopp* (1856) 21 Beav 259, where a sum was provided for payment of the tenant in tail's debts, and for the purchase of a commission in the army.

4 *Wycherley v Wycherley* (1763) 2 Eden 175.

5 *Jones v Boulter* (1786) 1 Cox Eq Cas 288. As to dower and its abolition see REAL PROPERTY vol 39(2) (Reissue) PARA 161.

6 *Tendril v Smith* (1740) 2 Atk 85; *Davis v Uphill* (1818) 1 Swan 129. As to limitations see PARA 715 et seq ante.

7 *Persse v Persse* (1840) 7 Cl & Fin 279, HL. As to dealings with expectancies see CHOSES IN ACTION vol 13 (2009) PARA 30; MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 855 et seq.

8 *Tennent v Tennents* (1870) LR 2 Sc & Div 6, HL.

9 *Bellamy v Sabine* (1847) 2 Ph 425; *Wakefield v Gibbon* (1857) 1 Giff 401.

10 *Wiseman v Roper* (1645) 1 Rep Ch 158.

11 *Stapilton v Stapilton* (1739) 1 Atk 2; *Westby v Westby* (1842) 2 Dr & War 502. As to illegitimate children see PARA 731 ante.

12 See *Gordon v Gordon* (1821) 3 Swan 400, where the arrangement was set aside on the ground that one party to it suppressed from the other material facts.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(1) DEFINITION/1004. Examples relating to the division of property.

1004. Examples relating to the division of property.

The following arrangements for division of property have been supported as family arrangements:

- 242 (1) an agreement for the division of family property by way of compromise of a family quarrel or litigation about a disputed or lost will¹, or even to prevent family friction, where there is no question as to the devolution of the property nor any disputed right, there being some consideration for the arrangement other than love and affection², or any arrangement as to division of property where the construction of a will or other instrument under which the parties claim is doubtful³;
- 243 (2) an agreement dividing up family property, though entered into under a misapprehension of the legal rights of the parties, provided the misapprehension is not induced by any party to the agreement⁴, even where the fact that misapprehension existed has been established by subsequent legal decision⁵;
- 244 (3) an agreement between members of a family to divide equally whatever they obtain under the will of an ancestor⁶;
- 245 (4) an agreement between co-heiresses dividing the property between them⁷;
- 246 (5) an agreement between the heir at law and a person supposed to be entitled under a lost will dividing the property between themselves and other members of the family⁸; and
- 247 (6) an agreement dividing the family property between members of the family where some of the members had a title independently of the will of their father, who purported to dispose of the whole among his sons and daughters⁹.

1 *Cann v Cann* (1721) 1 P Wms 723; *Pullen v Ready* (1743) 2 Atk 587; *Gascoyne v Chandler* (1755) 3 Swan 418n; *Neale v Neale* (1837) 1 Keen 672; *Wilcocks v Carter* (1875) LR 19 Eq 327 (overruled on the construction of the agreement of compromise 10 Ch App 440). As to disputed and lost wills see EXECUTORS AND ADMINISTRATORS.

2 *Williams v Williams* (1867) 2 Ch App 294.

3 *Gibbons v Caunt* (1799) 4 Ves 840; *Stockley v Stockley* (1812) 1 Ves & B 23; *Hotchkis v Dickson* (1820) 2 Bls 303, HL; *Fowler v Fowler* (1859) 4 De G & J 250; *Partridge v Smith* (1863) 11 WR 714. If the parties had not present to their minds the doubts alleged to be compromised, the transaction cannot be supported as a family arrangement: *Harvey v Cooke* (1827) 4 Russ 34; *Ashhurst v Mill* (1848) 7 Hare 502; *Cloutte v Storey* [1911] 1 Ch 18 at 33-34, CA, per Farwell LJ.

4 *Frank v Frank* (1667) 1 Cas in Ch 84; *Stephens v Bateman* (1778) 1 Bro CC 22; *Stewart v Stewart* (1839) 6 Cl & Fin 911, HL; *Bentley v Mackay* (1862) 8 Jur NS 857 (affd 8 Jur NS 1001). As to misrepresentation see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 701 et seq.

5 *Lawton v Campion* (1854) 18 Beav 87.

6 *Beckley v Newland* (1723) 2 P Wms 182 (this case is treated as an example of a family arrangement in *Hoghton v Hoghton* (1852) 15 Beav 278 at 301, although this is not the ground upon which the judgment proceeded); *Harwood v Tooke* (1812) 2 Sim 192; *Wethered v Wethered* (1828) 2 Sim 183; *Higgins v Hill* (1887) 56 LT 426.

7 *Head v Godlee* (1859) John 536.

8 *Heap v Tonge* (1851) 9 Hare 90.

9 *Houghton v Lees* (1854) 1 Jur NS 862.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(2) GENERAL PRINCIPLES/1005. Principles governing family arrangements.

(2) GENERAL PRINCIPLES

1005. Principles governing family arrangements.

Family arrangements are governed by principles which are not applicable to dealings between strangers¹. When deciding the rights of parties under a family arrangement or a claim to upset such an arrangement, the court considers what in the broadest view of the matter is most in the interest of the family, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account². Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements³. Conversely, an intention to create a legally enforceable contract may be negated more readily where the parties to an arrangement are members of the same family than where they are not⁴.

Although usually and necessarily present where a family arrangement is made, parental influence will not by itself render the transaction voidable⁵, but where, at a time when he is not fully emancipated from his parent's influence⁶, a child enters into a family arrangement under which the parent benefits to the total exclusion of the child⁷ or benefits to an extent out of all proportion to the benefit accruing to the child⁸, there is a presumption of undue influence⁹. The presumption will be rebutted if it appears that, when the arrangement was entered into, the child was able to form a free and unfettered judgment independent of any sort of control¹⁰.

1 *Persse v Persse* (1840) 7 Cl & Fin 279 at 318, HL, per Lord Cottenham LC.

2 *Jodrell v Jodrell* (1851) 14 Beav 397 at 412-413 per Sir John Romilly MR. See also *Hardwicke v Johnson* [1978] 2 All ER 935, [1978] 1 WLR 683, CA.

3 *Jodrell v Jodrell* (1851) 14 Beav 397 at 412 per Sir John Romilly MR; *Hoblyn v Hoblyn* (1889) 41 ChD 200 at 204; *Westby v Westby* (1842) 2 Dr & War 502 (where the doctrine as to family arrangements is elaborately examined and explained). See also *Persse v Persse* (1840) 7 Cl & Fin 279, HL; *Williams v Williams* (1867) 2 Ch App 294.

4 *Balfour v Balfour* [1919] 2 KB 571, CA. See also CONTRACT vol 9(1) (Reissue) PARAS 723-726.

5 *Hoghton v Hoghton* (1852) 15 Beav 278 at 305; *Hartopp v Hartopp* (1856) 21 Beav 259 at 266. As to voidable contracts see CONTRACT vol 9(1) (Reissue) PARA 607 et seq.

6 As to the time at which a child can be said to be fully emancipated from his parent's influence see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 844.

7 See eg *Savery v King* (1856) 5 HL Cas 627, where the arrangement between father and son was effected for the purpose of borrowing money on the family property exclusively for the father's benefit.

8 See eg *Hoghton v Hoghton* (1852) 15 Beav 278. *Kinchant v Kinchant* (1784) 1 Bro CC 369 is to the contrary, but has been questioned: see *Brown v Carter* (1801) 5 Ves 862 at 877. See also *Talbot v Staniforth* (1861) 1 John & H 484 (where a purchase by a father, the tenant for life, from his son, the reversioner, was set aside although the object was the laudable one of keeping the estate in the family); *Playford v Playford* (1845) 4 Hare 546 (similar purchase by father again set aside, although purchase money used to pay off son's debts and other consideration given to him). In *Willoughby v Brideoake* (1865) 11 Jur NS 524 (which appears at variance with *Playford v Playford* supra) the court refused to set aside such a purchase as against a purchaser from the father after a delay of 17 years, but on appeal (11 Jur NS 706) the decision of the court below was affirmed without prejudice to any question between the son and his father's estate.

9 *Archer v Hudson* (1844) 7 Beav 551 at 560. As to the effect of parental and other influence on the validity of family arrangements see PARA 1021 post. As to the presumption of undue influence between parent and child see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 843 et seq.

10 *Archer v Hudson* (1844) 7 Beav 551 at 560; *Hoghton v Hoghton* (1852) 15 Beav 278 at 306; *Dimsdale v Dimsdale* (1856) 3 Drew 556 at 571; *Turner v Collins*(1871) 7 Ch App 329 at 338. As to the need for separate advice see PARA 1022 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(2) GENERAL PRINCIPLES/1006. Considerations favouring family arrangements.

1006. Considerations favouring family arrangements.

Considerations which will lead a court to support a family arrangement are that as a result of the family arrangement disputes are avoided in the family¹; the honour of the family is safeguarded², or various obligations, morally binding on a family, are provided for³; or family property is continued in the family⁴.

1 *Hoghton v Hoghton* (1852) 15 Beav 278; *Neale v Neale* (1837) 1 Keen 672.

2 See eg *Stapilton v Stapilton* (1739) 1 Atk 2 (where provision was made for an illegitimate child); *Westby v Westby* (1842) 2 Dr & War 502 (compromise of dispute arising out of invalid marriage).

3 Eg in *Hartopp v Hartopp* (1856) 21 Beav 259, by a resettlement made shortly after the tenant in tail attained 21, a jointure was secured to his mother, and the interest of his daughters was postponed to that of his younger brothers. In *Wycherley v Wycherley* (1763) 2 Eden 175 provision was made in the settlement for the tenant in tail's sisters, in as much as these provisions were not for the benefit of the persons through whose influence the settlements were procured, they were not considered objections to the arrangement. In *Hoblyn v Hoblyn* (1889) 41 ChD 200 at 204, Kekewich J stated that the duty to provide for those members of the family who are not intended to succeed to the family property is one recognised by the court.

4 *Hoghton v Hoghton* (1852) 15 Beav 278 at 300, 307 per Sir John Romilly MR; *Dimsdale v Dimsdale* (1856) 3 Drew 556 at 569 per Kindersley V-C; *Hoblyn v Hoblyn* (1889) 41 ChD 200 at 204 per Kekewich J. An arrangement by which an extravagant son was excluded from his interest in the family business, so preserving it for the rest of the family, was supported in *Tennent v Tennents* (1870) LR 2 Sc & Div 6, HL. As to examples of particular arrangements which have been upheld see PARAS 1003-1004 ante.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(3) FORMALITIES/1007. Formalities in general.

(3) FORMALITIES

1007. Formalities in general.

The necessary and sufficient formalities of a family arrangement are the same generally as those of any contract relating to the same subject matter¹. Accordingly, where land is concerned, writing is necessary². Where land is not concerned writing is not necessary³.

For effectuating the division of the estate of a deceased person under a family arrangement in respect of the legal estate in land, a written assent by the personal representatives is, it appears, sufficient⁴.

1 See CONTRACT vol 9(1) (Reissue) PARA 620 et seq; DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 27 et seq.

2 See the Law of Property (Miscellaneous Provisions) Act 1989 s 2 (as amended), which requires contracts for the sale or other disposition of an interest in land to be in writing and incorporate all the terms expressly agreed by the parties. See further SALE OF LAND vol 42 (Reissue) PARAS 29-40.

3 *Gibbons v Caunt* (1799) 4 Ves 840.

4 See the Administration of Estates Act 1925 s 36(1), under which an assent to the vesting in any person who (whether by devise, bequest, devolution, appropriation or otherwise) may be entitled to the property operates to vest the legal estate in such person even if he turns out to be the wrong person (see s 36(2), (4)), subject, however, to the rights of recovery afforded by ss 36(7), (9), 38(1). See further EXECUTORS AND ADMINISTRATORS.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(3) FORMALITIES/1008. Need for concluded agreement.

1008. Need for concluded agreement.

There must be a concluded agreement between the parties on the point in dispute¹. An agreement will not necessarily be implied from a mere course of dealing², although third parties acquiring rights under such a course of dealing will in some cases be protected³.

1 *Heald v Walls* (1870) 39 LJ Ch 217.

2 *Bullock v Downes* (1860) 9 HL Cas 1; *Re Moulton, Grahame v Moulton* (1906) 94 LT 454, CA. A course of dealing is strong evidence, however, of an agreement in existence: *Miller v Harrison* (1871) IR 5 Eq 324.

3 *Clifton v Cockburn* (1834) 3 My & K 76, where family arrangements had taken place under a mistaken construction of a settlement.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(3) FORMALITIES/1009. All parties must adopt the arrangement.

1009. All parties must adopt the arrangement.

Subject to any express or implied provision to the contrary¹, a family arrangement come to by persons who have executed the instrument embodying the arrangement without the knowledge, or in the absence, of one member of the family intended to be affected by it is regarded as having been entered into on the assumption that the absentee will in due time join in the transaction. His concurrence, therefore, either by execution of the document² or by adoptive acts³, is an implied condition of the validity of the arrangement, and if such concurrence is not obtained the arrangement is not binding even on those parties who executed the document⁴. The execution of the arrangement or acts adopting it will be ineffective if the person concerned does not have the capacity to contract⁵.

1 *Peto v Peto* (1849) 16 Sim 590; *Bolitho v Hillyar* (1865) 34 Beav 180.

2 *Peto v Peto* (1849) 16 Sim 590; *Re Morton, Morton v Morton* [1932] 1 Ch 505.

3 *Dimsdale v Dimsdale* (1856) 3 Drew 556; *Westby v Westby* (1842) 2 Dr & War 502.

4 The effect of non-execution of a deed by one or more parties to it is discussed in DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 62. See also CONTRACT vol 9(1) (Reissue) PARA 686.

5 *Bolitho v Hillyar* (1865) 34 Beav 180. As to the capacity to contract see CONTRACT vol 9(1) (Reissue) PARA 630.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(4) PARTIES/1010. Parties in general.

(4) PARTIES

1010. Parties in general.

Any members of a family may be parties to a family arrangement. Agreements between husband and wife¹, parent and child², legitimate or illegitimate³, uncle and nephews and nieces⁴, co-heiresses⁵, and brothers⁶, have all been supported as family arrangements⁷.

In arrangements between husband and wife by which the wife charges her property to pay the husband's debts, an inference that she is lending to her husband, and therefore is entitled to be indemnified by him, will only arise if there are facts justifying the inference, and there is no presumption for the husband to rebut⁸.

1 *Jodrell v Jodrell* (1845) 9 Beav 45; *Jodrell v Jodrell* (1851) 14 Beav 397; *Harrison v Harrison*[1910] 1 KB 35.

2 *Hartropp v Hartropp* (1856) 21 Beav 259. However, as to the limits within which such arrangements must be made see PARA 1021 post.

3 *Stapilton v Stapilton* (1739) 1 Atk 2; *Heap v Tonge* (1851) 9 Hare 90. As to illegitimate and legitimated children see PARAS 731-732 ante.

4 *Lawton v Campion* (1854) 18 Beav 87; *Wiseman v Roper* (1645) 1 Rep Ch 158.

5 *Head v Godlee* (1859) John 536.

6 *Cann v Cann* (1721) 1 P Wms 723.

7 As to examples of family arrangements see PARAS 1003-1004 ante.

8 *Page v Page*[1898] 1 Ch 470, CA. See also MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARA 239.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(4) PARTIES/1011. Parties under disability.

1011. Parties under disability.

Unless an arrangement is made with the sanction of the court¹, if a party is under a disability at the time of execution, and it is in his or her interest to repudiate the arrangement, repudiation may be inferred or not according to the rules applicable to other contracts of such persons². It is no objection that one of the parties is a reversioner or an expectant heir³.

1 See PARA 1012 post.

2 See CHILDREN AND YOUNG PERSONS VOL 5(3) (2008 Reissue) PARA 25; MENTAL HEALTH VOL 30(2) (Reissue) PARA 600 et seq. As to capacity to contract see PARA 1010 ante; and CONTRACT VOL 9(1) (Reissue) PARA 630.

3 *Tweddell v Tweddell* (1822) Turn & R 1; *Bellamy v Sabine* (1847) 2 Ph 425 at 439; *Willoughby v Brideoake* (1865) 11 Jur NS 524, on appeal 11 Jur NS 706. See, however, *Talbot v Staniforth* (1861) 1 John & H 484; *Playford v Playford* (1845) 4 Hare 546. As to the rule in ordinary cases with regard to dealings with reversioners and expectant heirs see MISREPRESENTATION AND FRAUD VOL 31 (2003 Reissue) PARAS 855-858; EQUITY VOL 16(2) (Reissue) PARA 431.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(4) PARTIES/1012. Court's jurisdiction to sanction arrangements on behalf of persons under disability.

1012. Court's jurisdiction to sanction arrangements on behalf of persons under disability.

Apart from its statutory powers in respect of the variation of trusts¹, the court has a limited inherent jurisdiction to sanction on behalf of all parties acts that are desirable and necessary for the benefit of the trust estate and the interests of the beneficiaries, but which, without such sanction, the trustees would have no power to do². This jurisdiction is confined to those cases in which the variation is justified either by reasons of salvage arising from practical necessity³; or to allow maintenance out of income which the settlor has directed to be accumulated, where it may be assumed that he did not intend the children to be left unprovided for during the accumulation period⁴; or to compromise doubtful or disputed rights or settle questions of constructions⁵. It does not extend to the re-arrangement of beneficial interests merely because that seems expedient or beneficial⁶, nor does it enable, for example, the court to alter a man's will because it thinks it beneficial⁷. In those cases where it is exercised by way of salvage, it is a jurisdiction to confer on trustees administrative powers⁸. The jurisdiction to sanction a compromise of disputed rights is not, in a true sense, a jurisdiction to alter beneficial interests⁹.

The court has a wide statutory jurisdiction, on behalf of persons under disability and others, to approve arrangements varying or revoking the trusts of any property or enlarging the trustees' powers of management or administration¹⁰. The court also has a more limited statutory jurisdiction, in relation to trust property other than settled land, to confer on the trustees powers of management or administration beyond those authorised by the trust instrument or by law¹¹. The court has a further statutory jurisdiction to sanction certain transactions by the tenant for life of settled land or by trustees of land¹².

1 As to such powers see the text and notes 10-12 infra.

2 *Re New, Re Leavers, Re Morley* [1901] 2 Ch 534 at 544-545, CA, per Romer LJ; *Re Wells, Boyer v Maclean* [1903] 1 Ch 848; *Re Downshire Settled Estates, Marquess of Downshire v Royal Bank of Scotland* [1953] Ch 218, [1953] 1 All ER 103, CA; *Chapman v Chapman* [1954] AC 429, [1954] 1 All ER 798, HL. As to the powers of trustees in relation to settlements see PARA 750 et seq ante; and as to the powers of trustees generally see TRUSTS vol 48 (2007 Reissue) PARA 971 et seq.

3 *Re New, Re Leavers, Re Morley* [1901] 2 Ch 534, CA; *Re Tollemache* [1903] 1 Ch 955, CA; *Re Heyworth's Contingent Reversionary Interest* [1956] Ch 364, [1956] 2 All ER 21 (beneficiary a child; variation of trusts). See further TRUSTS vol 48 (2007 Reissue) PARA 1060.

4 *Re Walker, Walker v Duncombe* [1901] 1 Ch 879. As to powers of maintenance see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 58 et seq.

5 *Re Lord Hylton's Settlement, Barclays Bank Ltd v Jolliffe* [1954] 2 All ER 647n, [1954] 1 WLR 1055, CA; *Chapman v Chapman* [1954] AC 429 at 445, [1954] 1 All ER 798 at 802, HL, per Viscount Simonds. See also *Brooke v Lord Mostyn* (1864) 2 De G & Sm 373.

6 *Chapman v Chapman* [1954] AC 429, [1954] 1 All ER 798, HL.

7 *Re Walker, Walker v Duncombe* [1901] 1 Ch 879 at 885; *Re New, Re Leavers, Re Morley* [1901] 2 Ch 534, CA; *Re Wells, Boyer v Maclean* [1903] 1 Ch 848; *Chapman v Chapman* [1954] AC 429 at 445, [1954] 1 All ER 798 at 802, HL, per Viscount Simonds; *Re Cockerell's Settlement Trusts, Cockerell v National Provincial Bank Ltd* [1956] Ch 372, [1956] 2 All ER 172.

8 *Re Downshire Settled Estates, Marquess of Downshire v Royal Bank of Scotland* [1953] Ch 218, [1953] 1 All ER 103; *Chapman v Chapman* [1954] AC 429, [1954] 1 All ER 798, HL. See also TRUSTS vol 48 (2007 Reissue) PARA 1060.

9 *Chapman v Chapman* [1954] AC 429 at 461, [1954] 1 All ER 798 at 814, HL, per Lord Morton of Henryton.

10 See the Variation of Trusts Act 1958; and TRUSTS vol 48 (2007 Reissue) PARA 1062 et seq.

11 See the Trustee Act 1925 s 57; and TRUSTS vol 48 (2007 Reissue) PARA 1061.

12 See the Settled Land Act 1925 s 64(1) (see PARA 671 ante); and the Trusts of Land and Appointment of Trustees Act 1996 s 14 (see TRUSTS vol 48 (2007 Reissue) PARA 1038). See also *Re Simmons, Simmons v Public Trustee* [1956] Ch 125, [1955] 3 All ER 818. In view of the wide jurisdiction conferred by the Variation of Trusts Act 1958, the powers conferred by the Trustee Act 1925 s 57, and the Settled Land Act 1925 s 64 (as amended), are now usually invoked only where the court's sanction is sought in respect of a particular transaction. As to the court's jurisdiction to order provision to be made for dependants out of the estate of a deceased person under the Inheritance (Provision for Family and Dependents) Act 1975 see EXECUTORS AND ADMINISTRATORS.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(5) CONSIDERATION/1013. How far consideration is required.

(5) CONSIDERATION

1013. How far consideration is required.

Since the consideration for a family arrangement is partly value and partly love and affection, the pecuniary worth of the consideration is not regarded too closely¹. The court will not, as a general rule, inquire into the adequacy of the consideration², but there is an equity to set aside a family arrangement where the inadequacy of the consideration is so gross as to lead to the conclusion that the party either did not understand what he was about, or was the victim of some imposition³.

1 See *Persse v Persse* (1840) 7 Cl & Fin 279, HL; *Bellamy v Sabine* (1847) 2 Ph 425. As to the treatment of family arrangements, in which a consideration for money or money's worth is involved, in the context of certain statutory provisions see PARA 1026 et seq post. As to consideration generally see CONTRACT vol 9(1) (Reissue) PARA 727 et seq.

2 *Houghton v Lees* (1854) 1 Jur NS 862; *Wycherley v Wycherley* (1763) 2 Eden 175; *Stephens v Bateman* (1778) 1 Bro CC 22; *Williams v Williams* (1867) 2 Ch App 294 at 304.

3 *Tennent v Tennent* (1870) LR 2 Sc & Div 6 at 9, HL, per Lord Westbury. See also EQUITY vol 16(2) (Reissue) PARA 429.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(5) CONSIDERATION/1014. Compromise of doubtful rights.

1014. Compromise of doubtful rights.

The intention formed after due deliberation to compromise doubtful rights is sufficient consideration for a family arrangement, and the agreement will be enforceable even if the rights turn out to be different from what they were thought to be¹. There must, however, be an intention to compromise such rights, and not a mere agreement fixing the amount to which a party is entitled on a particular interpretation of those rights, adopted by the parties as unquestionable². In such a case the collateral point of the extent of the right will be left open, and the agreement will not preclude a subsequent action to determine the right³. A deed of arrangement involving the compromise of specific questions will not be construed so as to deprive parties of rights not in dispute at the time of the deed⁴.

1 *Stapilton v Stapilton* (1739) 1 Atk 2; *Naylor v Winch* (1824) 1 Sim & St 555; *Lawton v Campion* (1854) 18 Beav 87; *Houghton v Lees* (1854) 1 Jur NS 862. As to compromises as constituting consideration generally see CONTRACT vol 9(1) (Reissue) PARA 740.

2 *Lawton v Campion* (1854) 18 Beav 87; *Bennett v Merriman* (1843) 6 Beav 360.

3 See note 4 infra.

4 *Cloutte v Storey* [1911] 1 Ch 18 at 34, CA, per Farwell LJ. Cf *Cocking v Pratt* (1750) 1 Ves Sen 400 (agreement as to distribution of personal estate; value found to be much greater than was known); *Bennett v Merriman* (1843) 6 Beav 360 (compromise under the court; subsequent point of construction); *Lindo v Lindo* (1839) 1 Beav 496.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(5) CONSIDERATION/1015. Concurrence of members of family.

1015. Concurrence of members of family.

As between two parties the concurrence of another member of the family is sufficient consideration for a family arrangement if that member brings property into the arrangement or if, without that member's concurrence, the arrangement could not be effectuated¹.

1 *Williams v Williams* (1867) 2 Ch App 294 (widow concurring in an agreement between two sons to relinquish her rights); *Heap v Tonge* (1851) 9 Hare 90.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(6) VALIDITY/1016. Duty of disclosure.

(6) VALIDITY

1016. Duty of disclosure.

In any family arrangement there must be honest disclosure by each party to the other of all such material facts known to him, relative to the rights and title of either, as are calculated to influence the other's judgment in the adoption of the arrangement, and any advantage taken by either of the parties of the other's known ignorance of such facts will render the agreement liable to be set aside¹.

If one party to the arrangement has material information in his possession which, without any dishonest intention, he does not communicate to the others, proceedings by them to set aside the transaction may succeed even though they made inquiries on the subject².

1 *Groves v Perkins* (1834) 6 Sim 576; *Pickering v Pickering* (1839) 2 Beav 31 at 56; *Reynell v Sprye, Sprye v Reynell* (1849) 8 Hare 222 at 257; *Cashin v Cashin*[1938] 1 All ER 536, PC. See also *Scott v Scott* (1847) 11 Eq R 74 at 96. Mere silence as regards a material fact which one party is not bound to disclose to the other is not a ground for rescission nor a defence to specific performance: *Turner v Green*[1895] 2 Ch 205. A compromise sanctioned by the court on behalf of a minor cannot be set aside by him on any ground which would be insufficient to set aside a compromise between persons *sui juris*. It is not clear whether it can always be set aside on grounds which, as between parties *sui juris*, would be sufficient. In no case can a compromise be set aside unless there has been, on the part of the person claiming to uphold it, conduct which in the view of a court of equity amounts to fraud: *Brooke v Lord Mostyn* (1864) 2 De GJ & Sm 373 at 416. See also EQUITY vol 16(2) (Reissue) PARA 412 et seq; CHILDREN AND YOUNG PERSONS vol 5(4) (2008 Reissue) PARA 1423.

2 *Greenwood v Greenwood* (1863) 2 De GJ & Sm 28; *Leonard v Leonard* (1812) 2 Ball & B 171 at 188. In *Pusey v Desbouvre* (1734) 3 P Wms 315 the executor kept to himself the value of the personal estate. In *Cocking v Pratt* (1750) 1 Ves Sen 400; *Groves v Perkins* (1834) 6 Sim 576 and *Greenwood v Greenwood* supra, some of the parties had more information as to the value of the property in question than the others. In *Bowles v Stewart* (1803) 1 Sch & Lef 209 deeds were kept back. In *Gordon v Gordon* (1821) 3 Swan 400 the fact of a secret marriage was known to one party and not to the other. In *Harvey v Cooke* (1827) 4 Russ 34 the party complaining was not informed as to certain legal opinions that had been taken. In *Pickering v Pickering* (1839) 2 Beav 31 counsel's opinion on the construction of a will had been obtained by the executor upon an imperfect statement of the terms of the will and the facts of the case; and in *Smith v Pincombe* (1852) 3 Mac & G 653 a will was not disclosed. In *Re Roberts, Roberts v Roberts*[1905] 1 Ch 704, CA, a legal opinion was incorrectly explained to the parties. See also *Dougan v Macpherson*[1902] AC 197, HL, a case of a trustee purchasing from a beneficiary. See further MISTAKE. As to the duties of the solicitor in advising see PARA 1023 post.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(6) VALIDITY/1017. Mistake in general.

1017. Mistake in general.

If a family arrangement has been fairly entered into without concealment or imposition upon either side, and with no suppression of what is true or suggestion of what is false, then, even though the parties may have greatly misunderstood the situation and mistaken their rights, the court will not disturb the arrangement¹, even if it rests upon grounds which would not have been considered satisfactory had the transaction occurred between mere strangers². Where, on the other hand, the transaction has been unfair and founded upon falsehood and misrepresentation, the court will have very great difficulty in permitting the contract to bind the parties³.

1 *Gordon v Gordon* (1821) 3 Swan 400 at 463 per Lord Eldon LC, cited with approval in *Cashin v Cashin* [1938] 1 All ER 536 at 543, PC.

2 *Westby v Westby* (1842) 2 Dr & War 502 at 525 per Lord Sugden LC. As to mistake generally see MISTAKE.

3 *Gordon v Gordon* (1821) 3 Swan 400 at 463 per Lord Eldon LC, cited with approval in *Cashin v Cashin* [1938] 1 All ER 536 at 543, PC. As to misrepresentation generally see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 701 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(6) VALIDITY/1018. Mistake in cases of compromise.

1018. Mistake in cases of compromise.

While in general it would defeat the object of a family arrangement based upon the compromise of doubtful rights if the agreement could be set aside on the grounds of mistake, equity will nevertheless relieve a party who, in ignorance of a plain and settled principle of law, is induced to give up a portion of his indisputable property to another under the name of a compromise¹. Relief will also be granted where parties, being ignorant of facts on which their rights depend or erroneously assuming that they know their rights, deal with the property accordingly and not upon the principle of compromising doubts².

1 *Naylor v Winch* (1824) 1 Sim & St 555 at 564, cited with approval in *Lawton v Campion* (1854) 18 Beav 87 at 93. See also EQUITY vol 16(2) (Reissue) PARA 442. As to compromise see CONTRACT vol 9(1) (Reissue) PARA 740.

2 *Stockley v Stockley* (1812) 1 Ves & B 23 at 31; *Harvey v Cooke* (1827) 4 Russ 34 at 57-58; *Reynell v Sprye, Sprye v Reynell* (1849) 8 Hare 222 at 255; *Lawton v Campion* (1854) 18 Beav 87 at 97-98. The plaintiff's right to relief is not forfeited by the mere fact that throughout he had the means, equally with the defendant, of knowing what his rights were and obtaining competent advice, or by the fact that the defendant was in ignorance and under mistake also: *Reynell v Sprye, Sprye v Reynell* supra.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(6) VALIDITY/1019. Ignorance.

1019. Ignorance.

Ignorance of one party as to the true state of his rights is not a fatal defect in a family arrangement, nor is ignorance of its true nature, so long as the transaction is in good faith and the ignorant party is not misled by any party to it, and the ignorant party has an intention not widely different from that actually expressed by the arrangement¹. In such cases the knowledge of the solicitor or agent is the knowledge of the client or principal².

1 *Frank v Frank* (1667) 1 Cas in Ch 84; *Stewart v Stewart* (1839) 6 Cl & Fin 911, HL; *Lawton v Campion* (1854) 18 Beav 87; *Dimsdale v Dimsdale* (1856) 3 Drew 556 at 571. The decision in *Turner v Turner* (1679) 2 Rep Ch 154 was to the opposite effect, but the case is very imperfectly reported, and the grounds of the decision are not given. The headnote to *Gee v Spencer* (1681) 1 Vern 32 is inaccurate, and the decision appears to have gone on the fact that the releasor had been led to believe something contrary to the fact, the case cited in support being one of fraud. The intention of the ignorant party may be shown by evidence, for example, of his desire to unite two estates which the arrangement settles in strict settlement: *Persse v Persse* (1840) 7 Cl & Fin 279, HL. As to the duties of the solicitor in advising see PARA 1023 post.

2 *Stewart v Stewart* (1839) 6 Cl & Fin 911 at 970, HL, per Lord Cottenham LC.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(6) VALIDITY/1020. Misrepresentation.

1020. Misrepresentation.

A compromise of a claim of estates founded on a mistake as to title induced by the misrepresentation or suppression of facts within the knowledge of one of the parties to the compromise may be set aside¹. A family arrangement may be rendered voidable by misrepresentation even though innocent², and for this purpose an insufficient or erroneous explanation may be sufficient misrepresentation³. An innocent misrepresentation will also give rise to a claim for damages where the misrepresentor is unable to prove that he had reasonable ground to believe and did believe up to the time the arrangement was entered into that the facts represented were true⁴. In the absence of fraud the court also has a discretion to award damages in lieu of rescission if it would be equitable to do so⁵.

1 *Leonard v Leonard* (1812) 2 Ball & B 171. See also EQUITY vol 16(2) (Reissue) PARA 442.

2 *Fane v Fane* (1875) LR 20 Eq 698; *Lansdown v Lansdown* (1730) Mos 364, which was adversely criticised in *Stewart v Stewart* (1839) 6 Cl & Fin 911 at 964, HL, per Lord Cottenham LC, but no doubt was thrown on the correctness of the decision so far as it decided that a positive misrepresentation, even as to legal rights, made by one of the parties to a family arrangement, is a ground for upsetting the arrangement at the suit of the party misled. See also *Gordon v Gordon* (1821) 3 Swan 400. See further MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 783.

3 *Harvey v Cooke* (1827) 4 Russ 34; *Re Roberts, Roberts v Roberts* [1905] 1 Ch 704, CA. As to innocent misrepresentation see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 762 et seq.

4 See the Misrepresentation Act 1967 s 2(1); and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 801.

5 See *ibid* s 2(2); and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 834.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(6) VALIDITY/1021. Influence of parents and other persons.

1021. Influence of parents and other persons.

Parental influence is inseparable from most cases of family arrangement¹. Where such influence is exercised by a father to obtain some undue benefit² for himself, it is *prima facie* fatal to the validity of the arrangement so far as that benefit to the father is concerned³. The exercise of parental influence, however, does not invalidate an arrangement where the benefits obtained are for third persons⁴, even though the influence amounts to strong pressure⁵. If the parent, as well as the third party, derives some benefit, the question whether that is fatal to the validity of the whole arrangement must be determined by the principles applicable to ordinary cases where transactions between parent and child for the benefit of the former are impeached⁶. An undue benefit so obtained by a parent may be given up or set aside and the rest of the arrangement may still be upheld⁷.

Influence other than parental is generally subject to the usual rules applicable to ordinary contracts⁸.

1 See PARA 1005 ante.

2 The benefit need not be of a direct nature: *McCausland v Young* [1949] NI 49.

3 Provisions in a resettlement reserving to the father (1) a general power of appointment upon the failure of the earlier trusts in favour of issue (*Hoghton v Hoghton* (1852) 15 Beav 278 at 307; *Fane v Fane* (1875) LR 20 Eq 698 at 710); and (2) a power to appoint an annual sum out of the settled property (*Hoghton v Hoghton* supra), have been considered unreasonable. It would be otherwise if the power, though reserved to the father, is exercisable only in favour of persons other than the father: *Hoblyn v Hoblyn* (1889) 41 ChD 200; *Tennent v Tennent* (1870) LR 2 Sc & Div 6, HL.

4 He persons other than the parent through whose influence the arrangement was brought about, for example mother, brothers, sisters, or other collateral relatives: *Tendril v Smith* (1740) 2 Atk 85; *Hoghton v Hoghton* (1852) 15 Beav 278; *Hartopp v Hartopp* (1856) 21 Beav 259; *Jenner v Jenner* (1860) 2 Giff 232 (affd 2 De GF & J 359); *Fane v Fane* (1875) LR 20 Eq 698 at 706 per Hall V-C; *Hoblyn v Hoblyn* (1889) 41 ChD 200 at 206.

5 *Wycherley v Wycherley* (1763) 2 Eden 175 (warmth of temper without improper exercise of influence). The influence may be equally effectual though silent: *Hartopp v Hartopp* (1856) 21 Beav 259.

6 *Hoghton v Hoghton* (1852) 15 Beav 278 at 306 per Sir John Romilly MR; *Dimsdale v Dimsdale* (1856) 3 Drew 556 at 571; *Hoblyn v Hoblyn* (1889) 41 ChD 200. As to undue influence generally see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 839 et seq. As to transactions between parent and child see also EQUITY vol 16(2) (Reissue) PARA 425; GIFTS vol 52 (2009) PARA 211; CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) PARA 12 et seq. As to frauds on powers see POWERS.

7 *Dimsdale v Dimsdale* (1856) 3 Drew 556. In *Jenner v Jenner* (1860) 2 Giff 232 (affd 2 De GF & J 359) the provision for the father's benefit was not complained of, and the court refused to set aside the settlement. Had the provision been impeached, the decision might have been different. In *Hoblyn v Hoblyn* (1889) 41 ChD 200 the father gave up the provision for his benefit, and the mother her jointure, and accordingly the action to set aside the settlement was dismissed.

8 *Bentley v Mackay* (1862) 31 Beav 143; affd 4 De GF & J 279 (although in this case the agreement was not set aside); *Ellis v Barker* (1871) 7 Ch App 104. As to the general law on this subject see CONTRACT vol 9(1) (Reissue) PARA 712 et seq. As to the presumption of undue influence where a solicitor takes a benefit under the arrangement see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 846.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(6) VALIDITY/1022. Separate advice.

1022. Separate advice.

It is not essential to the validity of a family arrangement that the various parties should have separate advice¹. Any party may be properly advised by the family solicitor², or even by another party having opposing interests³.

It is, however, advisable to have separate advice, particularly if some of the parties are at a disadvantage as regards knowledge, experience, education, means or social position⁴, and generally where there is a risk of the doctrine of undue influence being invoked⁵. To omit it is to incur the risk of the arrangement being set aside⁶.

The advice may be obtained either by employing a separate solicitor, or by the family solicitor instructing separate counsel to advise the party⁷.

1 *Jenner v Jenner* (1860) 2 Giff 232 (affd 2 De GF & J 359); *Bentley v Mackay* (1862) 31 Beav 143 (affd 4 De GF & J 279); *Cashin v Cashin* [1938] 1 All ER 536 at 543, PC.

2 *Hartopp v Hartopp* (1856) 21 Beav 259; *Hoblyn v Hoblyn* (1889) 41 ChD 200.

3 *Hotchkis v Dickson* (1820) 2 Bli 303, HL.

4 *Hoblyn v Hoblyn* (1889) 41 ChD 200 at 205 per Kekewich J; *Cashin v Cashin* [1938] 1 All ER 536. See also *Bruty v Edmundson* (1915) 113 LT 1197 at 1201-1202.

5 See PARA 1021 ante. Cf *Bullock v Lloyds Bank Ltd* [1955] Ch 317, [1954] 3 All ER 726. See further MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 853.

6 *Sturge v Sturge* (1849) 12 Beav 229 at 239. In such a case it will not be sufficient that the documents contain a full recital of the circumstances; the parties should also have time given them to consider their position and take the advice of their friends: *Evans v Llewellyn* (1787) 1 Cox Eq Cas 333.

7 *Hoblyn v Hoblyn* (1889) 41 ChD 200.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(6) VALIDITY/1023. Duties of solicitor in advising.

1023. Duties of solicitor in advising.

A solicitor who advises parties to a family arrangement must take care that any representations he makes on the title to and rights in the property, and the effect of the arrangement, are accurate¹. If the solicitor's view is inaccurate as to facts or law, or if he considers it advisable to keep the parties in ignorance of the facts in order to effect the compromise, the arrangement may be voidable on the ground of non-disclosure or misrepresentation². It is not sufficient merely to read over the documents, the party must be made to understand their effect³.

1 *Fane v Fane* (1875) LR 20 Eq 698 at 707; *Hoblyn v Hoblyn* (1889) 41 ChD 200; *Willis v Barron* [1902] AC 271, HL. As to the duties of a solicitor advising a party where there is a risk of undue influence see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 853.

2 *Re Roberts, Roberts v Roberts* [1905] 1 Ch 704, CA. As to solicitors' obligations towards their clients see LEGAL PROFESSIONS vol 66 (2009) PARA 814 et seq. See also *Powell v Powell* [1900] 1 Ch 243 as modified in *Inche Noriah v Shaik Allie Bin Omar* [1929] AC 127, PC.

3 *Sturge v Sturge* (1849) 12 Beav 229.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(6) VALIDITY/1024. Drunkenness.

1024. Drunkenness.

Dissolute habits, though not constituting absolute incapacity, will lead the court to examine a transaction strictly, particularly where the instrument contains in itself evidence that unfair advantage has been taken¹. Additional care is therefore necessary on the part of other parties in case a party is drunk or addicted to drink, for the state of such a person's mind and the circumstances are considered even if he is sober at the time². If the party is made drunk for the purpose, the arrangement is voidable³, but it is not voidable if no unfair advantage is taken, and the arrangement is reasonable⁴. The court refused to give effect to an agreement as to division of property where the heir gave up property to which he had undoubted rights without consideration, and where he was ignorant, a drunkard, and without professional assistance, though there was no evidence of fraud or undue influence⁵.

1 See CONTRACT vol 9(1) (Reissue) PARA 717.

2 *Dunnage v White* (1818) 1 Swan 137.

3 *Johnson v Medlicott* (1734) 3 P Wms 131 note [A]; *Cooke v Clayworth* (1811) 18 Ves 12. See also CONTRACT vol 9(1) (Reissue) PARA 717.

4 *Cory v Cory* (1747) 1 Ves Sen 19.

5 *Dunnage v White* (1818) 1 Swan 137. As to undue influence see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 839 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(7) EFFECT/1025. Benefits to persons not parties.

(7) EFFECT

1025. Benefits to persons not parties.

Whether a family arrangement is enforceable by a person who is not a party to it depends on the same principles as apply to other contracts¹. An arrangement is not enforceable by a person not a party to it merely because it confers a benefit on him², but if, in a deed of family arrangement, A covenants to confer a benefit on B, and B is not named as a party to the deed, B may nevertheless sue upon the covenant³, at all events if the covenant relates to real property⁴. A family arrangement, whether or not made by deed, in which A confers an interest on T, who takes as trustee for B, is enforceable by B even though he is not a party⁵. The peculiar considerations applicable to the validity of family arrangements do not arise in favour of persons who are not parties⁶.

1 See CONTRACT vol 9(1) (Reissue) PARA 748 et seq.

2 See CONTRACT vol 9(1) (Reissue) PARA 749.

3 See the Law of Property Act 1925 s 56(1) (see CONTRACT vol 9(1) (Reissue) PARA 617; DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 61); *Beswick v Beswick*[1968] AC 58 at 105-107, [1967] 2 All ER 1197 at 1223-1224, HL, per Lord Upjohn.

4 *Beswick v Beswick*[1968] AC 58 at 77, [1967] 2 All ER 1197 at 1204-1205, HL, per Lord Reid, at 81 and 1207 per Lord Hodson, and at 87 and 1211 per Lord Guest. See also DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 61.

5 *Priestley v Ellis*[1897] 1 Ch 489.

6 *Willis v Barron*[1902] AC 271, HL.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(7) EFFECT/1026. Creditor's rights to avoid an arrangement.

1026. Creditor's rights to avoid an arrangement.

A deed genuinely made by way of family arrangement and which is made for good or valuable consideration will not be liable to be set aside¹ as a transaction defrauding creditors². Likewise so long as it is made for valuable consideration, such a deed will not be voidable at the instance of the trustee in bankruptcy³ as a transaction at an undervalue or a preference⁴. If, however, the deed is made in such circumstances as to show that it was meant to defraud creditors, it will be set aside at their request⁵.

A provision for the benefit of creditors in a family arrangement is subject to the rules usually applicable to such a provision⁶.

1 See under the Insolvency Act 1986 s 423: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 644. See also the Law of Property Act 1925 s 173 (voluntary dispositions made with intent to defraud purchasers); and MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 867 et seq.

2 See *Jones v Boulter* (1786) 1 Cox Eq Cas 288; *Hotchkis v Dickson* (1820) 2 Bls 303, HL; *Wakefield v Gibbon* (1857) 1 Giff 401; *Re Johnson, Golden v Gillam* (1881) 20 ChD 389; affd (1882) 51 L.J. Ch 503, CA. See also *Denny's Trustee v Denny and Warr* [1919] 1 KB 583. See generally MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 867 et seq.

3 See under the Insolvency Act 1986 ss 339 or 340: see BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 653 et seq.

4 See *Hance v Harding* (1888) 20 QBD 732, CA (a settlement of property by a parent there forming a valuable consideration); *Re Eyre, ex p Eyre* (1881) 44 LT 922. See also BANKRUPTCY AND INDIVIDUAL INSOLVENCY vol 3(2) (2002 Reissue) PARA 653 et seq.

5 *Penhall v Elwin* (1853) 1 Sm & G 258; *Re Maddever, Three Towns Banking Co v Maddever* (1884) 27 ChD 523, CA.

6 *Priestley v Ellis* [1897] 1 Ch 489. See TRUSTS vol 48 (2007 Reissue) PARA 668.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(7) EFFECT/1027. Effect of presence or absence of valuable consideration.

1027. Effect of presence or absence of valuable consideration.

The courts have from time to time had to consider whether a particular family arrangement was or was not a 'voluntary disposition', 'purchase', 'sale' or 'disposition for valuable consideration' in a particular statutory context¹.

Accordingly, a deed of family arrangement disposing of land has been held not to be a voluntary disposition for the purposes of the statutory provisions² rendering voidable voluntary dispositions which are made with intent to defraud a subsequent purchaser for value³. For the purposes of stamp duty⁴, while some deeds of family arrangements for which valuable consideration is given may not be and have not been regarded as conveyances on sale⁵, other such deeds may and have been so regarded⁶. Conversely, for the purposes of the Rent Acts⁷, a person who acquired a dwelling house by way of family arrangement, albeit giving valuable consideration for the acquisition, was held not to have become landlord by purchasing⁸.

It presumably depends on the nature and terms of the family arrangement in question, and the circumstances in which it was made, whether the arrangement is regarded as a disposition for valuable consideration if it is sought to be impeached in the course of a claim for financial relief in divorce proceedings⁹, or as a disposition for full valuable consideration if it is sought to be impeached in the course of a claim for financial provision from a deceased's estate¹⁰.

1 See the text and notes 2-10 infra.

2 Ie the Law of Property Act 1925 s 173, re-enacting 27 Eliz 1 c 4 (Fraudulent Conveyances) (1584-5) (repealed), and the Voluntary Conveyances Act 1893 (repealed); see MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 868.

3 See *Heap v Tonge* (1851) 9 Hare 90; *Bennett v Bernard* (1848) 10 I Eq R 584. See generally MISREPRESENTATION AND FRAUD vol 31 (2003 Reissue) PARA 867 et seq.

4 See the Stamp Act 1891 s 54; and STAMP DUTIES AND STAMP DUTY RESERVE TAX vol 44(1) (Reissue) PARA 1030.

5 *Marquess of Bristol v IRC* [1901] 2 KB 336 at 340, DC; *Denn d Manifold v Diamond* (1825) 4 B & C 243; *Cormack's Trustees v IRC* 1924 SC 819.

6 *Marquess of Bristol v IRC* [1901] 2 KB 336, DC; *Oughtred v IRC* [1960] AC 206, [1959] 3 All ER 623, HL. See also *Lethbridge v A-G* [1907] AC 19, HL.

7 See the Rent Act 1977 s 98 (as amended), Sch 15 Pt I Case 9; and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 956 et seq.

8 See *Thomas v Fryer* [1970] 2 All ER 1, [1970] 1 WLR 845, CA. See further *IRC v Gribble* [1913] 3 KB 212 at 218, CA, per Buckley LJ; *HL Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd* [1957] 1 QB 159 at 170, [1956] 3 All ER 624 at 628, CA, per Denning LJ; *Frederick Lawrence Ltd v Freeman, Hardy and Willis Ltd* [1959] Ch 731, [1959] 3 All ER 77, CA. See also LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 956 et seq.

9 See the Matrimonial Causes Act 1973 s 37(4); and MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 73 (2009) PARA 587. See also note 10 infra.

10 See the Inheritance (Provision for Family and Dependents) Act 1975 s 10(2); and EXECUTORS AND ADMINISTRATORS. A genuine deed of family arrangement would probably not be liable to be impeached under this provision or under the provision referred to in note 9 supra.

UPDATE

1027 Effect of presence or absence of valuable consideration

NOTE 4--Section 54 repealed: Finance Act 1999 Sch 19 para 1, Sch 20 Pt V(2).

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(7) EFFECT/1028. Tax considerations.

1028. Tax considerations.

Except in certain special cases¹, a disposition by way of family arrangement stands on the same footing for the purposes of capital gains tax and inheritance tax as any other inter vivos disposition².

Where within the period of two years after a person's death any of the dispositions (whether effected by will, under the law relating to intestacy or otherwise) of the property of which he was competent to dispose are varied, or the benefit conferred by any of those dispositions is disclaimed, by an instrument in writing made by the persons who benefit or would benefit under the dispositions (which includes, but is clearly not confined to, a deed of family arrangement or similar instrument)³, provided the requisite notices of election are given to the Commissioners of Inland Revenue: (1) the variation or disclaimer is not a disposal for the purposes of capital gains tax, the variation is treated as if it had been effected by the deceased, or as the case may be, as if the disclaimed benefit had never been conferred⁴; and (2) the Inheritance Tax Act 1984 applies as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred⁵.

1 See the text and notes 3-5 infra.

2 See CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 41 et seq; INHERITANCE TAXATION vol 24 (Reissue) PARA 407 et seq.

3 The position is to be contrasted, therefore, with the original capital gains tax and inheritance tax provisions governing post-death variations (see the Finance Act 1965 s 24(11) (repealed) and the Finance Act 1975 s 47(1) respectively (repealed)), which were limited to deeds of family arrangement or similar instruments. Difficulties were sometimes caused when it was desired to benefit a stranger to the family under the variation.

4 See the Taxation of Chargeable Gains Act 1992 s 62(6), (7); and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 111. The variation is only treated as having been effected by the deceased (or the disclaimed benefit treated as never having been conferred) for the purposes of s 62 (as amended) (and in particular, s 62(4), applying where a person acquires an asset as legatee from personal representatives), and not for the purposes of capital gains tax generally: see *Marshall (Inspector of Taxes) v Kerr* [1995] 1 AC 148, [1994] 2 All ER 106, HL; and CAPITAL GAINS TAXATION vol 5(1) (2004 Reissue) PARA 111.

5 See the Inheritance Tax Act 1984 s 142(1), (2); and INHERITANCE TAXATION vol 24 (Reissue) PARA 471. As to other circumstances where alteration is allowed of dispositions taking effect on death for inheritance tax purposes see ss 143-146; and INHERITANCE TAXATION vol 24 (Reissue) PARA 472 et seq.

Halsbury's Laws of England/SETTLEMENTS (VOLUME 42 (REISSUE))/6. FAMILY ARRANGEMENTS/(7) EFFECT/1029-1100. Effect of arrangement assigning interest in settled land.

1029-1100. Effect of arrangement assigning interest in settled land.

A deed of family arrangement, otherwise than as a security for payment of money advanced, by which the estate or interest of a tenant for life¹ under the Settled Land Act 1925 is assigned or charged is deemed to be one of the instruments creating the settlement, and not an assignment for value². The deed of family arrangement does not affect the powers of the tenant for life³ but, in relation to the exercise of those powers, he is a trustee for the assignee⁴. The trustees of the original settlement are the trustees of the compound settlement constituted by the original settlement and the deed of family arrangement⁵.

1 For the meaning of 'tenant for life' see PARA 671 note 5 ante. See also PARA 761 et seq ante.

2 See the Settled Land Act 1925 s 104(11); and PARA 684 ante.

3 See ibid s 104(1); and PARA 777 ante. As to the powers of a tenant for life see PARA 775 et seq ante.

4 See ibid s 107(1); and PARA 775 ante.

5 See ibid s 31(1) (as amended); and PARA 754 ante. This provision removed the conveyancing difficulty occasioned by the Settled Land Act 1890 s 4 (repealed) (see now the Settled Land Act 1925 s 104(11); and the text to note 2 supra): see *Re Du Cane and Nettlefold's Contract* [1898] 2 Ch 96; *Re Lord Wimborne and Browne's Contract* [1904] 1 Ch 537. As to compound settlements see PARA 681 et seq ante.

